IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 140

NATHAN WILLNER,

Appellant,

vs.

COMMITTEE ON CHARACTER and FITNESS.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

APPELLEE'S BRIEF

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APPELLEE'S BRIEF

Introduction

(1)

In May, 1961, the petitioner, Nathan Willner, whose *two prior applications* (one made in 1937 and the other in 1948) *for admission to the Bar of the State of New York* had been denied, applied to the Appellate Division of the New York Supreme Court, First Judicial Department, pursuant to Rule 1(e) of the New York Rules of Civil Practice "for an order, granting the petitioner *leave* to file his application for admission to the Bar of the State of New York" (R., p. 1, italics supplied).

The petitioner's previous applications for admission had been denied because the Committee on Character and Fitness (hereinafter called "The Committee") determined that it was "not satisfied and cannot certify that the applicant possesses the character and general fitness requisite for an attorney and counselor at law as provided by section 88 of the Judiciary Law" (R., p. 3).

On June 29, 1961, the Appellate Division denied the petitioner *leave* to file his application for admission to the Bar of the State of New York *de novo*, pursuant to Rule 1(c) of the New York Rules (R., p. 13).

The Appellate Division having denied the petitioner permission to *renew* his twice-denied application for admission to the New York Bar, the petitioner sought and on January 11, 1962 obtained leave from the New York Court of Appeals to appeal to that Court from the Appellate Division order (R., p. 23). The Court of Appeals, on April 5, 1962, affirmed the Appellate Division's discretionary order, even though the appeal was argued for the petitioner and no one appeared for the Character Committee (R., pp. 25-27). On April 26, 1962, the Court of Appeals granted petitioner's *unopposed* motion to amend its remittitur, by adding thereto a statement that upon the appeal to that Court, there was presented a question under the Constitution of the United States.

This Court, on June 25, 1962, granted Willner's petition for a writ of certiorari to the New York Court of Appeals and transferred this case to its summary calendar (R., p. 28; 370 U. S. 934). A motion made by the respondent to dismiss the writ was denied by this Court on November 13, 1962 (R., p. 29; 371 U. S. 900).

Decisions Below Without Opinion

No opinion was written by the New York Court of Appeals, upon its unanimous affirmance of the Appellate Division's denial of Willner's petition for leave to renew his

application for admission to the New York Bar. 11 N. Y. 2d 956. Nor had the Appellate Division, in unanimously denying his petition, written any opinion. 13 A. D. 2d 956.

New York Judiciary Law, § 90, subd. 1

The admission of attorneys and counsellors-at-law to practice as such in the courts of *New York* has been governed, even prior to the petitioner's first application for admission by New York Judiciary Law, § 90, subd. 1. The applicable portion of that subdivision now provides, in its paragraph "a":

> "Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if *it* shall be *satisfied* that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate division relating to the admission of attorneys." (Italics supplied)

For a half century, the first subdivision of § 90 has made it a prerequisite to admission that the *Appellate Division* be "satisfied" as to an applicant's "character and general fitness". L. 1912, ch. 253; formerly, Judiciary Law § 88. See L. 1871, ch. 486 § 3.

As to two of the four judicial departments of the State, which have functioned in its most densely populated areas, the same subdivision of Judiciary Law, § 90 has long taken cognizance of the fact that each of the Appellate Divisions of the Supreme Court, First and Second Departments, had

appointed a "committee on character and fitness * * * pursuant to the rules of civil practice." At present, the statute empowers each such committee with the written consent of a *majority* of the justices of its department, to "appoint and remove a secretary, stenographers and assistants, and procure a suitable office for each committee * * * for the proper performance of the duties of each committee" (Judiciary Law § 90, 1, d).

The Functions of the Character Committee

(1)

Rule 1 of the New York Rules of Civil Practice has, at least since 1921 empowered the Appellate Division in *each* Department to appoint a committee of not less than three practicing lawyers for each judicial district within its department,

> "which committee shall *investigate* the character and fitness of every applicant for admission to the bar" (Italics supplied).

The Rule required all applications for admission to the bar of persons residing within a district to be referred to "the committee for such district". It also provided that, unless otherwise ordered by the court (more recently modified to specify the court as the "Appellate Division"),

> "no person shall be admitted to the bar without a certificate from the proper committee that it has carefully *investigated* the character and fitness of the applicant and that, in such respects, he is entitled to admission" (Italics supplied).

(2)

Since 1921, Rule 1 has also authorized the committee "to prescribe a form of written *statement* of the applicant's experience, from which the committee may pass on his moral and general fitness" (Italics supplied).

The portion of the Rule referred to in the foregoing quotation was amended in 1950 to provide (Clevenger's Practice Manual, 1962 Annual, Rules of Civil Practice, Rule 1, d, in part):

> "To enable the committee to make such investigation the committee, subject to the approval of the Justices of the Appellate Division, is authorized to prescribe and from time to time to amend a form of *statement or questionnaire* on which the applicant shall set forth in his usual handwriting all the information and data required by the committee and the Appellate Division justices, including specifically his present and past places of actual residence (listing the street and number, if any) and the period of time he resided at each place." (Italics supplied)

The most recent revision (L. 1962, ch. 310) of the pertinent New York statutory provisions has preserved these requirements as to certification of character and as to the submission by an applicant of a statement or questionnaire. Rule 9404 of the New York Civil Practice Law and Rules (to become effective September 1, 1963) provides:

> "*Rule 9404. Certificate of character and fitness*
>
> Unless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission. To enable the committee to make such investigation the committee, subject to the approval of the justices of the appellate division, is authorized to prescribe and from time to time to amend a form of statement or questionnaire on which the applicant shall set forth in his usual handwriting all the information and data required by the committee and the appellate division justices, including specifically his present and past

places of actual residence, listing the street and number, if any, and the period of time he resided at each place."

(3)

For some years, Rule 1 has also contained a provision in its subdivision "e", requiring the written consent of the Appellate Division to the *renewal* of an application for admission. Rule 1(e) has provided, at least since 1950, as follows:

> "(e) In the event that any applicant has made a prior application for admission to practice in this state or in any other jurisdiction, then upon said statement or questionnaire or in an accompanying signed statement, he shall set forth in detail all the facts with respect to such prior application and its disposition. If such prior application had been filed in any Appellate Division of this State and if the applicant failed to obtain a certificate of good character and fitness from the appropriate character committee or if for any reason such prior application was disapproved or rejected either by said committee or said Appellate Division, he shall obtain and submit the written consent of said Appellate Division to the renewal of his application in that Appellate Division or in any other Appellate Division."

(4)

The necessity, under New York law, for a certification by the committee of an applicant's character, was emphasized by the decision in *Matter of Peters*, 250 N. Y. 595 (1929), where admission to practice was denied to an applicant, who claimed that his disbarment in another state had been void, where a character committee reported his general good character apart from the implication flowing from disbarment, but *without* recommendation. The

New York Court of Appeals answered in the negative a question certified to it by the Third Department as to whether, upon such a report, the applicant was entitled "as a matter of right" to "admission to the Bar of this State" (250 N. Y. 595, 596). The Third Department had denied a motion to modify the report of its character committee (*supra*, p. 596).

Although *lack* of certification by the Committee would appear under New York law, to preclude admission as a *matter of right*, the New York Court of Appeals, upon review, has exercised its power to remit admission proceedings to the Appellate Division, where the Court of Appeals has found that denial of admission has been founded upon an insufficient basis. *Matter of Anonymous*, 10 N. Y. 2d 740 (1961).

Filing and Confidentiality of Papers Relating to Application

(1)

At least since 1921, the Clerk of each Appellate Division has been required to "file in his office all the papers presented and acted on by the court on each application for admission". The 1950 amendment of the Rule provided for such filing of every application "together with all the papers submitted thereon" upon its final disposition by the Appellate Division.

(2)

Judiciary Law § 90, has contained, among other provisions, a provision (subd. 10) making "confidential" all papers, records and documents upon the application of any person for admission. Originally added as subdivision 8 (L. 1945, ch. 675) and renumbered as subdivision 10 the next year (L. 1946, ch. 241 § 2, effective March 26, 1946), the statute still provides (Judiciary Law, § 90, subd. 10):

> "10. Any statute or rule to the contrary notwithstanding, all papers, records and documents upon the

application or examination of any person for admission as an attorney and counsellor at law and upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents. In the discretion of the presiding or acting presiding justice of said appellate division, such order may be made either without notice to the persons or attorneys to be affected thereby or upon such notice to them as he may direct. In furtherance of the purpose of this subdivision, said justices are also empowered, in their discretion, from time to time to make such rules as they may deem necessary."

Membership in the New York Bar is a Privilege, Not a Right

Membership in the New York bar has been deemed, by the New York courts, not to be an absolute right, but a privilege burdened with conditions. One of the conditions has been held to be the possession of good character. *Matter of Rouss*, 221 N. Y. 81 (1917). In the *Rouss* case, Judge (later Mr. Justice) CARDOZO stated (pp. 84-85):

"Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards (*Selling* v. *Radford*, 243 U. S. 46; *Matter of Durant*, 80 Conn. 140, 147). Whenever the condition is broken, the privilege is lost. To refuse admission to an unworthy applicant is not

to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. To strike the unworthy lawyer from the roll is not to add to the pains and penalties of crime. The examination into character is renewed; and the test of fitness is no longer satisfied. For these reasons courts have repeatedly said that disbarment is not punishment (*Ex parte Wall*, 107 U. S. 265; *Matter of Randall*, 11 Allen, 473, 480; *Matter of Randel*, 158 N. Y. 216; *Boston Bar Assn.* v. *Casey*, 211 Mass. 187, 192; *Matter of Durant, supra*)."

It has also been deemed to be the New York law that the so-called "right" to practice law is "not a right, but merely a privilege, and may be withdrawn by the State through its proper disciplinary body when such privilege has been violated". *People* v. *Speiser*, 162 Misc. 9, 10 (N. Y. Co. Ct. Gen. Sessions, 1936). See also *Matter of Baum*, 55 Hun 611, reported in full, 8 N.Y.S. 771 (2d Dept., 1890); And see *Matter of N. Y. Co. Lawyers' Assn. (Roel)*, 4 Misc. 2d 728 (1956) aff'd 3 A. D. 2d 742 (1st Dept., 1957), aff'd 3 N. Y. 2d 224 (1957), app. dism. 355 U. S. 604 (1958), where it was emphasized that there was no inherent "right" to admission to the bar, but that New York has a right to prescribe the qualifications of those who practice law (4 Misc. 2d 728, 730-731).

Lack of Veracity Deemed by New York to be Evidence of Character

The significance attached to truthful replies in the statement or questionnaire submitted by an applicant to the Committee has been stressed by the New York courts. See *Matter of Baldwin*, 258 App. Div. 661 (2d Dept., 1940), where disbarment resulted from misrepresentations contained in the applicant's statement concerning, among other matters, the service of a clerkship then required of

all applicants pursuant to a rule of the New York Court of Appeals.

In *Matter of Klein*, 242 App. Div. 494 (1st Dept., 1934), admission to the New York bar, procured by fraudulent *misrepresentations* and *concealments* before the Character Committee, was also revoked. The Presiding Justice of the Court stated the (New York) law to be (p. 495):

> "It has been well held that fraud practiced by an applicant for admission to the bar, which affects even in the slightest degree his admission, strikes at the very foundation of his license to practice. To hold that a person may gain admission to the bar by *misrepresentation* or *suppression of the truth* and, if subsequently detected, may then use this fraudulently obtained certificate after a period of suspension, and thus be on a par with one who has rightfully come into the enjoyment of his professional privileges and obligations and thereafter stand upon an equal parity with the latter, would be to cast an aspersion upon every honest member of the profession" (Italics supplied).

The same Court, in *Matter of Schecht*, 242 App. Div. 495 (1st Dept., 1934) revoked a New York license to practice as an attorney where the evidence established that the attorney had, in a questionnaire signed and sworn to by him and filed with a Committee on Character and Fitness, given a *false answer* to a question as to whether he had "ever been a party to or otherwise involved in any action or proceeding either civil or criminal". He had made *no answer* to an item in the questionnaire in which the facts and name of the Court and the date of the action were to be supplied in the event that his answer concerning such litigation had been in the affirmative. The facts were that Schecht had been a party defendant (8 or 9 years prior to the date of the questionnaire) in an action brought by his first wife to annul their marriage on the ground that he

had made false and fraudulent representations at the time he induced her to marry him. Schecht sought to excuse his answer as "inadvertent". He also argued that "even if the question which had been erroneously answered by him had been answered properly, there would not have been the slightest reason" for disqualifying him from admission to the bar. The Court concluded from the record that Schecht had "deliberately concealed from the Committee on Character and Fitness the fact of such judgment" (242 App. Div. 495, 497).

In *Matter of Cassidy*, 268 App. Div. 282 (2d Dept., 1944), aff'd 296 N. Y. 926 (1945), where by reason of the 5-to-2 decision of the committee as to whether the applicant possessed the necessary character, the issue came before the Appellate Division for decision, the Second Department denied the application for admission, despite the favorable recommendation of a majority of the committee. The Court considered the fact that Cassidy advocated the creation of a private army as demonstrating his "unfitness" to become a member of the bar of the State of New York. It found that the record *also* demonstrated (268 App. Div. 286):

> "that the applicant lacks that high standard of veracity required by an officer of the court".

In *Matter of Greenblatt*, 253 App. Div. 391 (2d Dept., 1938), a reapplication for admission to the New York bar was denied, despite favorable action by a character committee, where the committee had disapproved the original application because of false answers in the applicant's original questionnaire. The applicant had in 1926 been dropped, for an "irregularity" in an examination, at The University of Maryland; and had sought to conceal such "dropping" and the reason therefor in the answers. The Court found the following facts (253 App. Div. 391, 392):

> "The applicant's difficulties originated in a false statement made by him in his first questionnaire, fol-

lowed by deliberate attempts, not only to deceive the committee, himself, as to certain irregularities while he was a student at the University of Maryland, but to enlist the aid of that university in such deception. It was for that reason that the application was originally denied in 1933. Upon this reapplication we find no evidence of repentance, but, to the contrary, the effort to deceive was continued, not only in the new papers filed, but in the oral examination before the committee and almost to the close of the hearing, when the truth was admitted."

In *Matter of Braunstone*, 265 App. Div. 337 (1st Dept., 1942), an attorney was disbarred in 1942, where the evidence established that in a questionnaire verified by him in September, 1932, and again in October, 1932, he denied that he had been a party to any action or proceeding other than those referred to in his questionnaire; when the actual fact, which he thereby concealed, was that in February, 1929, an action had been commenced against him by his wife in which she sought an annulment of their marriage upon the ground of fraud. The evidence before the Court sustained findings that the attorney had also made false allegations and given false testimony in support of an action which he brought in 1936 to annul a subsequent marriage. The Court also found that the attorney had "aggravated the seriousness of his misconduct by attempting to deceive the Referee by giving false testimony on the hearings" (265 App. Div., at p. 339).

The Rejection of Willner's 1937 and 1948 Applications for Admission to the New York Bar and Prior Denials of His Requests for Leave to File a New Application

I. Willner's Failure in 1937 to File a Truthful Questionnaire.

On February 13, 1937 and April 1, 1937, Willner filed with the Committee, in accordance with its usual requirement, his supposedly completed questionnaire (CrD 1, 3).* The filing of the *additional* April 1, 1937, questionnaire was required because Willner had *disregarded* the Committee's instruction that an applicant's answers *must be* in the applicant's own "handwriting".

In *prominent black type*, Willner was *warned*, on the *front page* of the *first* questionnaire he filed with the Committee, in these explicit terms:

> **"Applicant must answer all questions and inquiries for information, fully, truthfully and accurately. Any omissions or inaccuracies may be deemed ground for disapproval and rejection.**

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* References preceded by the letters "CrD" are to items in the amended cross-designation dated October 5, 1962. By stipulation (on file) dated October 26, 1962, it has been agreed that the items set forth in the cross-designation be made part of the record on this appeal and that they need not be printed. The 1937 questionnaire and the other items cross-designated, together with the stipulation, have been filed with the Clerk of the Court.

We stipulated to relieve the appellant of the burden of printing all the papers specified in our cross-designation. We must respectfully refer, however, to the "complete file" which has been transmitted to this Court by the Appellate Division. It contains all the papers which were before the New York Court of Appeals. By reason of the passage of time since the appellant first made his application, some of the papers which, at various times, have been before the Appellate Division or its Committee, *may* have been destroyed or lost. But, we believe, all of the papers which were before the Court of Appeals, upon affirmance, are now in this Court's files.

"Ability to express full and responsive answers will be considered an element in the determination of fitness. The committee will not approve incomplete, defective, or carelessly prepared papers."

A similar *caveat* was printed in prominent type at the head of the April, 1937 questionnaire filed by applicant.

The usual procedure of the Committee is to place a notice in the New York Law Journal and to request information concerning the applicants for admission to the bar listed in such notices. In response to such a notice, a complaint, dated April 15, 1937, was received from an attorney, named Leo M. Wieder, stating in substance that he had employed the applicant from May 18, 1931 to November 7, 1931, as a law clerk and that because of absences, late hours and neglect of duties, he had asked the applicant to resign several days before his clerkship was to terminate because he "had not performed a regular law clerkship in accordance with the rules" (CrD 7).

The questionnaire filed by Willner with the Committee did *not* reveal in his answer to *Question 12*, asking him to state "law offices with which you have been connected, with address of each, nature of your connection and services, and the month and year of the beginning and ending thereof," the fact that Willner had *at any time* been *employed* by Wieder. His answer to Question 12 was "None".

In answer to Question 13, Willner, in response to a request for information as to the "law office or offices in which you served" a law clerkship, merely stated "No Clerkship" (CrD 1; 3).

II. Investigation by the Committee.

The Committee's clerk prepared a summary of Willner's questionnaire (CrD 2). That summary indicated, *inter*

alia (that: 1) Willner's statement of residence was questionable,* 2) that the questionnaire had not disclosed the fact that Willner had commenced a clerkship with Wieder as evidenced by a certificate dated May 11, 1931 purportedly filed by Willner with the Clerk of the New York Court of Appeals; and 3) that Willner had not disclosed in answer to the 16th question in the questionnaire, the litigation of the annulment of his first marriage, even though he had mentioned it in answer to question 8 (CrD 2).

It should be noted, before proceeding, that upon the face of the questionnaire, the service of a clerkship was not a *prerequisite* to Willner's admission to the Bar, since he had obtained a Master of Laws degree in 1934, in *addition* to a Bachelor of Laws degree in 1930. He had not passed his bar examination until June, *1936*.

A. Willner's First Meeting with the Committee.

According to the petition now before this Court, Willner had a "first meeting" with the Chairman of the Committee and two of its members at which he was "confronted with" the letter signed by Wieder (R 5). He told them the letter was "false" and "was instigated by the threat of extortion, the price of which was plainly labeled in the letter" (R 5). The Chairman allegedly promised a confrontation and an opportunity to prove the letter false (R 5-6).

B. The Hearing of May 4, 1937 (Tr. 1-22).**

On May 4, 1937, Willner appeared before the Committee. Five members of the Committee were present, including its

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* He had stated in his questionnaire that he lived with his parents in New York City. To the Committee Clerk, he stated he had a private home in Peekskill, N. Y., where he stayed with his wife and family (CrD 2). No question appears to have been raised at any later date as to the *bona fides* of his residence, since it did not appear he had voted in Peekskill (CrD 2).

** References preceded by "Tr." are to the transcript of the Committee's minutes (CrD 5).

Chairman. Confronted with the question as to whether he had ever been *employed in a law office*, he *admitted* he had been employed by a Leo M. Wieder (Tr. 1, 2). He *admitted* he "knew Mr. Wieder and I went up there and I got the job" (Tr. 2). He stated that "the moment I entered there to begin employment I filed a certificate of clerkship" (Tr. 3).

Willner's *explanation* for not setting forth his *employment* by Wieder was that he had worked with him "about a couple of days" (Tr. 2). He *denied* that he had had any difficulty with Wieder (Tr. 4).

Confronted with the fact (set forth in the Wieder letter of complaint) that Wieder said Willner had "worked" with him from May 18, 1931, until November 7, 1931, Willner *denied* Wieder was telling the truth (Tr. 4). He asserted, however, that, as a certified public accountant, he had for "over a year" maintained an "office in Mr. Wieder's office" (Tr. 5). Three days after he had made an arrangement for "desk space in an outer office, he had commenced working for Wieder and filed his certificate of clerkship (Tr. 6). He conceded that he had "made an arrangement with Mr. Wieder to do his clerking" (Tr. 6). Wieder explained that at the end of a week, he realized he couldn't be honest with him "doing my own work and his work" and the matter would lead to some trouble, so "I decided to let it go at that" and he told Wieder that (Tr. 6, 7). But he stayed in the office and paid rent to Wieder or to some other man (Tr. 5, 7).

Willner *denied* that Wieder had ever complained to him about absences or that Wieder had asked him for a resignation (Tr. 7, 8). He *denied*, too, asking Wieder for "an affidavit of clerkship from May 18th to November 17th, 1931 (Tr. 8). He avoided a clerkship by taking a course for Master of Laws from September, 1933 to June, 1934 (Tr. 8). He "did nothing" for three years after graduation from law school "about a clerkship or a Master's

degree" (Tr. 9). He again *denied* asking Wieder, in the summer of 1933, to give him an affidavit of clerkship from May 15th to November 17, 1931 and being refused by Wieder (Tr. 9). He *denied* becoming abusive and threatening and saying he would get even with Wieder (Tr. 9). This was "the first" he ever heard of this (Tr. 9).

He *admitted* knowing an Adolph Hunter. He was Hunter's accountant. He recommended Hunter to Wieder. But he *denied*, after leaving Wieder's employ, saying anything to Hunter with regard to Wieder. He denied ever telling Hunter that Wieder had been disbarred (Tr. 10). But he *explained* that Wieder had asked him that, upon cross-examination, in a suit for $700 he brought against Hunter, in which Wieder represented Hunter unsuccessfully (Tr. 10, 11).

Willner *denied* Wieder had ever stated to him "that he was calling this to the attention of the Committee"; or that he ever threatened Wieder "with physical harm, or any other way" (Tr. 11).

Questioned as to his annulled marriage to a sixteen year old, Willner denied knowledge of her age at the time of their marriage. He stated that he understood she was in her "third or fourth term high school but that she had been retarded in some way". He discovered her age after marriage, when he saw a picture her father had with the child's date of birth on it (Tr. 11). He did not defend the suit she brought, with her father as guardian. He never lived with her (Tr. 12).

Asked why he didn't "put that" annulment under the question dealing with *litigation* in which he had been a party, he explained (Tr. 12):

"Some people consider it a heinous offense."

He stated that the girl's parents had never sought to prosecute him. He was 22 and the ground of the annulment was non-age. He didn't have an attorney. Papers

were served on him, which he kept for years, but his illiterate mother "might have put them aside" (Tr. 12, 13). He named the attorneys who had represented his first wife. He subsequently married somebody else; and has two children (Tr. 13).

He stated he intended to practice law, if admitted, but intended to continue accounting, because he had contract obligations with people he did accounting for. Questioned as to whether he could practice law and accountancy at the same time, he said: "I can't do both" * * * "I think I will practice law"; and continued, to state, that he would give up his accountancy business "right away" (Tr. 13).

The hearing returned to the subject of Willner's "clerkship", under the questioning of another committee member (Tr. 14). He stated he had made the arrangement with Wieder three days before his clerkship began (Tr. 14). He made his arrangement with the other man in the office the same day. Although he had first mentioned this other man's name (Tr. 5) as "Brandt", Willner next stated he didn't "think his name was Brandt" (Tr. 14). His arrangement with "Brandt" was to pay rental for the use of the outside office. There were several people in the office—a lawyer, a real estate man and several others (Tr. 14-15).* His rent was $7.50 a month. He was to employ someone to carry on his work for his accounting clients, but there wasn't enough work to go around to pay a man. After a week, he told Wieder he was quitting (Tr. 15). It was "impossible to say honestly" he was clerking, and he "didn't want to do that" (Tr. 15). But he stayed there at least a year, doing only accounting on his own (Tr. 16). He thinks he paid the rent to a man named "Brandt" or a fellow named "Rosenberg" (Tr. 16). He could find out (Tr. 16). He has never had a "check account." He paid by cash (Tr. 16). He paid income tax only in the year 1933. He now owes The National City Bank $50 (Tr. 17).

* Cf. his present petition, R. 10.

Returning to his relations with Wieder, he explained that he denied on the stand, on cross-examination, the disparaging things Hunter had evidently told Wieder that Willner had said about Wieder. Willner told Wieder "to his face it was ridiculous, that I never said anything of the kind and he shouldn't harbor any such feelings at all. And that was the end of it" (Tr. 17). His relations with Wieder were "entirely pleasant" during that year. The question was brought up by Wieder in court, because Hunter didn't want to pay Willner the commissions Willner was entitled to (Tr. 17).

The commission was due Willner, he stated, for the sale of Hunter's business. Hunter and his partner, a Mr. Turnbull, had been recommended to Wieder by Willner as far back as 1929 or 1930 (Tr. 18). Hunter wanted to incense Wieder "in such a way that he would be angry at me and give the best in him to defend Hunter" (Tr. 19). But, even though he denied Hunter's story, Wieder "wasn't to be convinced". Wieder was angry and that was all there was to it" (Tr. 20).

He *admitted* (Tr. 20-21) he made a *mistake* when he answered "None" to Question 13 (sic) requesting him to

> "State all law offices with which you have been connected, with address of each, nature of your connection and services, and the month and year of the beginning and ending thereof. Include the law department of any corporation."

He sought to explain that he had "doubt at the time" and pointed to the next question as to "whether there was any claim made for any clerkship", where he also put down "None" (Tr. 21).

Asked whether he regarded the *mistake* as serious, he answered (Tr. 21):

> "A. Well, no. Probably, yes."

When the Committee pointed out that they had a letter of complaint from Wieder and the Committee didn't "know who Wieder is because you say you never worked for anybody", *Willner responded* (Tr. 21):

> "I realize now by virtue of the fact of this letter there is a serious thought there, but my own mind is absolutely clear and innocent."

To confirm his "innocence", Willner went on to assert that it was *he* who had sent out the certificate of clerkship; but he conceded that he had sent the certificate to the clerk in Albany (The Clerk of the Court of Appeals, where such certificates are required to be filed), but not to the Committee (Tr. 21).

Questioned by another Committee member he persisted in stating that, if admitted he would give up his accounting for the practice of law, after December 31, when his contracts expired with his accounting clients (Tr. 22).

The May 4, 1937 hearing closed with a statement by the Chairman of the Committee as follows (Tr. 22):

> "In view of the fact that there has been a complaint filed by Mr. Wieder the matter will stand adjourned. *You will have to explain more satisfactorily why you did not mention his name in answer to question 13* (sic). *We will give you every opportunity*" (Italics supplied).

C. Affidavit filed by Willner, verified December 1, 1937 (CrD 4).

The Committee permitted Willner to file a further affidavit, in December, 1937. In this affidavit, he purported to bring up to date the information requested of an applicant. With relation to question "12", he offered no further explanations for failing to reveal his 1931 connection with Wieder. As to question "13" he offered the explanation

that he was trying to determine whether he could complete the clerkship required for admission, but that the connection lasted only "about 4 days". He later submitted an affidavit, too, by an attorney, named Samuel Wolbarst, who stated he was associated with Wieder in 1931 and 1932. Wolbarst asserted in the affidavit that, to the best of his knowledge, Willner had desk room in the office (at West 34th Street, N.Y.C.) to do accounting and was not employed by Wieder as a law clerk and that any services or errands Willner performed for Wieder were purely voluntary. (Wolbarst's affidavit, verified April 26, 1938, is annexed in Court file to Willner's 1937 questionnaire.)

D. The Filing by James Dempsey of an Additional Complaint against Willner in December, 1937 (CrD 21)

While the Committee's investigation in connection with Willner's 1937 application was still pending, an additional complaint was filed against him. This complaint was received by letter dated December 1, 1937 from James Dempsey, an attorney with offices in White Plains. Dempsey's letter set forth his "grave doubt" as to Willner's fitness for admission. He offered to assist the Committee's investigators (CrD 21). Dempsey, upon interview in April, 1938, by a Committee investigator, stated that he had represented the Cortlandt Plumbing Supply Company (a company owned by one David Gross) which had sued and been sued by Willner, who had been employed to do some accounting work for the company. Among the allegations made in the litigation against Willner were that he had failed to return moneys that he had obtained for unsuccessful services in procuring an R.F.C. loan for his client; and that he had represented to his client that money was required "in order to take care of certain R.F.C. officials". Willner's counterclaim against the company was based on services rendered (CrD 23). The investigators' report (p. 1) disclosed that *Dempsey* had been attempting to work out a loan for Gross when *Willner* had "stepped into the picture".

E. Report of Character Committee Investigator, of December 1, 1937 (CrD 8).

An investigator for the Committee, through an interview with the "Daily Credit Bulletin", obtained information as to several lawsuits in which Willner had been, or appeared to be, a defendant, in the period from March, 1926, to November, 1937.

The Committee investigator also interviewed the White Plains attorney who had filed the December, 1937, complaint against Wieder. The investigator's report indicates that Dempsey confirmed orally the allegations contained in his letter of complaint. The *suit* against Willner alleged "false pretenses" by Willner in obtaining $300 plus a $65 check in fees from the Cortlandt Plumbing Supply Company, to obtain an R.F.C. loan. Despite the counterclaim by Willner for services and despite another claim by one, B. F. Curry (one of Willner's character references), on the $65 check, *Willner settled these suits by paying back $265 to the Plumbing Company.* The defense to the suit on the $65 check was that it was delivered to Willner with the understanding that it was not to be negotiated or presented for payment.

F. The Recommendation, dated May 16, 1938, that Willner be denied admission (CrD 14).

On May 16, 1938, a member of the Committee prepared a report for the Committee, recommending that Willner's application be denied (also annexed to CrD 71). The recommendation of denial was "because of his record and the misrepresentations of the applicant to the Committee".*

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* We are informed by the present Chairman of the Committee that references in reports of the Committee to an applicant's "record" have traditionally been made in the context of the "record" made by the applicant himself in the form of his questionnaires and the statements and explanations made by him upon any hearings held before the Committee.

As to Willner, the recommendation was preceded by the Committee member's preliminary observation (p. 1):

> "The record before the Committee discloses a number of matters requiring consideration."

The matters then discussed in the report related to: 1) Willner's failure to disclose in his questionnaire his employment by Wieder; 2) Willner's failure to list the suit against him for annulment in his answer to Question 17, even though he disclosed it in answer to Question 19; 3) his failure to list 6 judgments in addition to those mentioned by Willner in answer to Question 17; 4) Willner's failure to disclose the suit brought against him by Dempsey's client, Cortlandt Plumbing Supply Company, of which a Mr. Gross was president; and the Dempsey version of the facts of the suit, as obtained by a Committee investigator; 5) Willner's "general evasiveness" in answering questions, upon his first hearing before the Committee (see Tr. 1-22).

The report set forth Willner's "explanations" concerning the non-listing of his employment with Wieder; and his failure to list his annulment suit in his answer to Question 17.

On May 17, 1938, Willner was afforded an opportunity, at a further hearing, to offer his explanations as to the non-listed additional 6 judgments and as to the non-listing in his answers of his litigation with Dempsey's client.

G. The Committee Hearing Held May 17, 1938 (Tr. 23-34).

On May 17, 1938, Willner appeared again before the Committee. Four members of the Committee were present.

At the outset, he was questioned concerning a suit brought against him by a Mr. Herzog. Asked why he didn't mention it in his questionnaire he responded that the suit had been brought "only very recently", in November, 1937. He *admitted* that he had not mentioned the

suit in the supplemental affidavit he filed in December, 1937 (Tr. 23).

He also *admitted* that he had not mentioned a suit brought against him by the Bankers Indemnity Insurance Company in April, 1937. This suit like the Herzog suit, was settled in the very week it was brought (Tr. 23-24).

He *denied* that four other cases against Nathan Willners were cases against *him* (Tr. 24).

He was then questioned as to what his transactions had been with *Mr. Dempsey* (Tr. 24-34). His *explanation* was that, after he had sued a client in Peekskill for services, Dempsey had brought an action against *him* for *fraud* and *deceit;* that, after certain motions had been made, the actions had been settled on his paying Dempsey $200 (Tr. 24-25). He further explained, that it was an unjust claim, but that he had settled it "because he was coming before the Committee and for no other reason". In detail, he explained that the suit against him was for $365—consisting of $200 in checks, $100 in cash and $65 check", which Dempsey's client claimed he gave Willner; Willner *admitted* receiving the checks, but denied receipt of the cash; and stated that the sums ($200 in checks) received by him were paid for his services in securing credit for Dempsey's client through credit agencies and a bank; and the $65 was a "part payment on an R.F.C. loan I was negotiating at the time" (Tr. 25-28). He didn't get the R.F.C. loan for Dempsey's client, but renegotiated a $1,000 bank loan with the Westchester County National Bank (Tr. 28).

Willner *admitted* he "prepared all the papers for the R.F.C."; also that Dempsey's client claimed he gave Willner the $65 checks "to take care of" certain R.F.C. "officials", but Willner *denied* that he ever "gave anybody a nickel" of that money. He explained further that he had "written a brief" to the R.F.C. showing that this man was entitled to receive a $5,000 loan over a three-year

period; that R.F.C. agreed to take a financial statement from Dempsey's client for a subsequent period; that Dempsey's client had another accountant, who wanted to exaggerate the client's inventory, which Willner refused to do (Tr. 29-30).

Willner sued Dempsey's client first in the New York County Supreme Court for a balance due for services (approximately $300, he stated); his client then brought suit in Westchester County to recover the moneys that had been paid to him, alleging "false pretenses", a consolidation motion made by Dempsey was denied; then they got together and settled, by *his* payment of $265 (Tr. 30-31).

His explanation for not mentioning the litigation in his supplemental affidavit was that "he didn't owe anybody any money" and that was the only thing the Committee's secretary (Mr. Murphy) "impressed" on him. He "wasn't asked" to put them in his record affidavit (Tr. 31). He "wasn't told" he was to bring his papers up to date (Tr. 32). He maintained this position, allocating responsibility to Mr. Murphy, despite the fact that his affidavit of December 1, 1937 had referred to his February 28, questionnaire and then contained the statement (Tr. 32):

> "that since that time until the present date of the making of these premises, your deponent verily states that the answers to their interrogations set forth in the aforesaid required applicant's statement are still the same, except insofar as they affect the following questions numerically identified hereinafter."

All he did was to answer the questions Mr. Murphy had pointed out (Tr. 33). Mr. Willner's examination on May 17, 1938 concluded as follows (Tr. 33-34):

"By Mr. Ellison:

Q. As I understand it, Mr. Dempsey, in his action charged you with fraud? A. That's right.

Q. And you felt that you had received the money for work honestly done? A. That's right.

Q. You thought that by returning this money you would make a better impression before this Committee? A. I knew that Mr. Dempsey purposely brought that action and couched it in the terms he did because he knew at that time that I was coming up before the Character Committee.

Q. I didn't ask you that. I said, did you believe by settling that action charging you with fraud that you would come before this Committee in a better light? A. No.

Q. Than if you contested this issue of fraud? A. I did at that time, yes.

The Chairman: All right. We will excuse you."

H. Hearing of October 18, 1938 (Tr. 35-38).

A further hearing was held, with four Committee members present, on October 18, 1938.* At that hearing, Willner was accorded an opportunity to present to the Committee additional evidence and explanations. He adhered to his prior explanation for not listing the litigation with Dempsey's client—that he understood he was to list only his outstanding obligations (Tr. 36); and whether there was any litigation pending against (Tr. 37).

I. The Committee's Recommendation of October 18, 1938.

At the close of the October 18, 1938 hearing the Committee voted to concur in the recommendation of May, 1938—to deny Willner's application for admission. The five members of the Committee who had attended the hearings voted unanimously to reject the application. The *entire file of papers and the record* was then submitted to each of the other members of the Committee, who also

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* This hearing appears to have been held, at the request of Willner's wife.

unanimously concurred in the Committee's decision (CrD 13; letter to the Presiding Justice).

J. Hearing of October 26, 1938 (Tr. 39-43).

In response to a note dated October 19, 1938, from Willner's wife, she was permitted to appear before a member of the Committee on October 26, 1938. She was permitted to make a statement, which set forth in considerable detail, the family hardships which Willner had undergone and which still confronted him (Tr. 39-43). She was also permitted to state her own high regard for her husband (Tr. 40-41).

K. Formal Report of the Committee, dated October 31, 1938 (CrD 70).

On October 31, 1938, the Committee, in a report, signed by its full membership (10 members), stated that it had considered "the papers filed by the applicant and the statements orally made by him on his examination before it" and carefully investigated his character and fitness pursuant to Rule 1 of the Rules of Civil Practice. It stated further that "it has determined that it is not satisfied and cannot certify that the applicant possesses the character and general fitness requisite for an attorney and counsellor-at-law as provided in and by Section 88 of the Judiciary Law".

L. The Availability in New York of Judicial Review of the Denial of Willner's Application for Admission.

1. *By Appeal to The Court of Appeals.*

An application for admission to the Bar has been regarded in New York to be in the nature of a special proceeding.* When an application is denied by the Appellate

* In passing upon an application for admission to the Bar, the Courts in New York have been held to act "judicially". Cooper's Case, 22 N. Y. 67, 82-83 (1860). See also *In re Summers*, 325 U. S. 561, 565 (1945).

Division, it is subject to review by the Court of Appeals. That Court, in a proper case has exercised the power to reverse the Appellate Division, and to recommend an appropriate disposition of an application. See *Matter of Anonymous*, 10 N. Y. 2d 740 (1961).

2. *By Leave to Renew an Application, pursuant to Rule 1 of the Rules of Civil Practice.*

In addition, *specific* provision is made in Rule 1 of the Rules of Civil Practice for *renewal* of an application for admission. The rule, as revised in 1950, has required, however, the written consent of the Appellate Division to such renewals. Such consent is required to prevent abuse of the privilege of renewal. It is also designed to alert busy courts in populous areas, to prior court action and to facts relating to such prior action which might be buried in court archives or otherwise lost for various reasons due to the passage of time or the destruction of records.

M. Willner's Failure to Exhaust the Available New York Procedures to Review the 1938 Rejection of His Application.

It does not appear that Willner ever appealed, or sought to appeal directly from the 1938 denial of his application for admission. Nor does he appear to have exhausted his New York means of judicial review, in relation to several motions made by him, at various times subsequent to 1938, in various forms, for leave to renew his application and for other relief.

We shall refer to some details of these motions, made both before and after the Appellate Division, in 1948, allowed him to renew his application for admission. But before doing so, and before considering facts relating to his 1948 application, we shall refer to some post-1938 incidents, which were called to the attention of the Committee.

N. Complaints against Willner Received Subsequent to his 1938 Rejection.

1. After the Committee had filed its report, a letter was received from a Sylvester Barone, dated January 25, 1939, concerning Willner (CrD 15). It stated, in substance, that in 1938, Barone had given Willner $125 "to be used as a deposit in a business transaction" and that Willner had "converted this money to his use". This complaint was not investigated at the time it was received, since the Committee's report had already been filed. Subsequently, Barone was interviewed and stated that, in 1939, Willner gave him five post-dated checks for $5 each and that no part of the $100 balance had been paid. Barone offered to appear before the Committee (CrD 16).

2. On or about February 27, 1939, the Committee received from James Dempsey, Jr. a mimeographed letter sent by Willner to the editor of the Peekskill Evening Star, to the Exalted Ruler of the B.P.O.E. of Peekskill and to several other residents of Peekskill, the contents of which Mr. Dempsey referred to as "libelous" (CrD 24-26).

3. On or about March 23, 1939, the Committee received from Mr. Julian D. Cornell, a member at that time of the Junior Bar Committee of the Association of the Bar of the City of New York, which was sponsoring a reception to recently admitted members of the Bar, a letter addressed to him by Willner (CrD 27, 28). In it, Willner asked Mr. Cornell to explain to the "neophytes" being welcomed why Willner was not one of the successful candidates; and to point out to them:

> "The cowardly attribute that is manifestly concerned with a body of men who monopolize the very existence of a human being endowed with learning and ambitions, devoid of any personal aggrandizement that the Character Committee reaps."

He continued, to Mr. Cornell:

> "Do you know of any system of jurisprudence with but a taint of justice, where a judgment is rendered without any reason but merely steeped in stealth?"

In substance, he then asked Mr. Cornell to let him, the victim, know of the basis for the decision against him.

4. On or about April 7, 1939, the then Presiding Justice of the Appellate Division, Francis Martin, and the other Appellate Division Justices received a letter from Willner (CrD 29, 32). It stated:

> "For over *two years* my application before the Character Committee had been pending.
>
> There were some sittings before five men at which I attended from time to time, but on each occasion they took on a more peculiar aspect, steeped in some fine spun sophistries that were so obviously prejudicial, that the subtlety they intended, were limp from loss of vitality. * * *
>
> Then the ending off with *my inquiry* as to when the Committee would call me again, only to receive a letter in reply for the *very first time* that my application had been rejected.
>
> *No reason—no excuse—nothing.* Five men with a collected experience of about 150 years, jockeyed and bandied my name about for two full years before the clerk made up their minds for them."

5. On or about June 2 and June 12, 1939, Willner wrote letters to Fred L. Gross and Charles J. Buchner, both officials of the New York State Bar Association. (CrD 30-31). In these letters, Willner wrote, in part:

> "With whatever ounce of energy you can muster in your being, you must in the name of true administration of justice, add your voice against the cowardly method of unethical procedure in rejecting candidates to the Bar."

> May I state that I am prepared to testify before your committee at my own expense, anywhere in the State of New York, in reference to my case—similar no doubt to many others—whereby the Committee of Character and Fitness can be proved to be steeped in stealth; unethical in every sense of the word; political henchmen of a system of greediness which guarantees economic security to themselves alone; harboring the temerity to deprive rights without the necessity of stating reasons or conclusions of their particular findings; keeping the standards of attainments for admission castled in their own confines, in order to cloak their contemptuous determination in their exclusionary guillotine."

6. On or about December 12, 1939, the Committee received from Leo M. Wieder, the attorney who originally complained against Willner, a letter stating that on December 8, 1939, Willner had "severely assaulted" him. This alleged assault resulted in a criminal court proceeding, which will be referred to later (CrD 11).

O. Willner's 1943 Petition For Review or for a Rehearing (CrD 71)

On or about January 30, 1943, Willner filed with the Appellate Division a *petition* which he entitled "for review of his prior rejection for admission to the Bar and for a Further Hearing Relative to such Admission". It asked for a review or a new hearing (p. 11).

The petition (p. 1) noted that the testimony taken at hearings before the Committee and individual members thereof had been transcribed; was on file with the Clerk of the Appellate Division; and that

> petitioner deems it inadvisable to set forth at great detail the various phases of testimony and the basis upon which his application for admission to the Bar was denied."

The petitioner (p. 1) conceded that although he believed "*at the time*" that the Committee erred in its determination, "because of limited funds" he "could not proceed further to obtain a review of such determination"* (Italics supplied).

The petition requested a "further hearing" before the Committee so that it might properly consider "at this time" the question of Willner's "character and fitness to become a member of the Bar" (p. 2). It evinced an *awareness of the necessity and purpose of giving the Committee up-to-date information* for it stated expressly that he had listed his changes of address (p. 2):

> "So that the Committee can be properly apprised of the various places at which he has resided since the termination of the prior proceeding and the hearings in 1939."

The petition also recognized that his prior hearings had emphasized two distinct matters. He observed (p. 3)

> "*Firstly*, considerable stress was placed on the fact that in my questionnaire and statement for admission, I had set forth, in response to question 13, that I had served no clerkship."

He went on to explain his omission of this information and to dispute the credibility of the attorney who had filed the original complaint against him with relation to the clerkship (pp. 3-4).

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* Review of administrative determinations in New York must be sought within four months after the determination. N.Y.C.P.A. § 1296. Appeals to the New York Court of Appeals from Appellate Division orders generally must be taken within 60 days from the date of service of a written notice of the entry of an Appellate Division order. N.Y.C.P.A. § 592.

The *second* matter which he *acknowledged* had been stressed by the Committee was (p. 4):

> "my failure to state or explain more fully the nature of certain litigation in which I had participated at or about the time of my consideration before said Committee.
>
> Particular inquiry was made of me by the Clerk of the Character Committee during such time as to monies owing by me *and litigation pending.*" (Italics supplied)

He then sought to re-explain the circumstances of his litigation with his and Dempsey's client, Cortlandt Plumbing Supply Co. and the reason for *not disclosing* that litigation in his 1939 "additional statement" (pp. 4-5). He conceded (p. 5):

> "I do not deny that in my apparent desire to become admitted to the Bar, that I too erred in not submitting to the Character Committee full details as to that action, but it was at that time my sincere and honest belief that technically I was submitting what I had been requested to submit."

Note his reference to "full" details, when, as a matter of fact he had not disclosed the litigation at all.

The petition also contained an explanation of the circumstances leading to his being charged with *third degree assault* in 1939, by reason of his *breaking the nose of Leo M. Wieder*, the attorney who filed the original complaint against him (pp. 7-9). It also purported to bring up-to-date his various employments and professional activities as a certified public accountant (pp. 9-11).

P. The Committee Report dated February 8, 1943 relating to Willner's 1943 Petition (CrD 73).

The Committee prepared a report for the Appellate Division with relation to Willner's 1943 petition. This

report was "presented to the Court for such action as it may deem appropriate" (p. 3). Annexed to the report was a copy of the Committee's May 16, 1938 recommendation. Also annexed were copies (Exhs. B1 to B7) of certain letters written by Willner, after his rejection, which we have already mentioned (*supra*, pp. 29-31; reproduced herein as Appendix B1 to B7). The report (p. 2) stated that "The conduct of the petitioner since his rejection should also be considered". The report also emphasized (pp. 1-2) the fact that, in his December 1, 1937 affidavit, Willner had represented the continued correctness of his 1937 answers and that he had *then failed to mention* in his questionnaire the Cortlandt Plumbing Supply Company litigation referred to in Willner's petition.

Q. The Appellate Division, without opinion, on February 16, 1943, denied Willner's Petition.

R. July 24, 1947 Authorization by Willner to an attorney to examine the Committee and Appellate Division files (CrD 65).

On July 24, 1947, Willner authorized, in writing, an attorney named Morris Eisenstein to examine "any and all such papers and documents in the files of either the Committee on Character and Fitness, or of the Appellate Division, First Department and relate directly to my Admission to the Bar as an Attorney". This authorization, in the files of the Court, indicates that the testimony at Willner's hearings and the questionnaires filed by him were available to his attorney. Intra-Committee and Intra-Court reports were probably not made available, by reason of their confidential aspect.

S. Willner's 1948 Motion for a Rehearing Granted.

In January, 1948, Willner again moved for a rehearing. The Committee did *not* file a memorandum for the at-

tention of the Appellate Division. The Court, however, granted Willner's motion "insofar as to refer petitioner's application to the Committee on Character and Fitness for rehearing".

T. Willner's 1948 Questionnaire (CrD 6).

In connection with his renewed application for permission, Willner filed a new questionnaire, on May 21, 1948, together with supporting affidavits and other papers. This questionnaire is on file with this Court and will be referred to (*infra*, pp. 39, 40, 41) only insofar as it is necessary to clarify matters of significance at the 1948 hearings held by the Committee.

U. Additional Complaint against Willner received by the Committee prior to its 1948 Hearings.

On February 13, 1948, the following letter of complaint was received from Mr. Harold H. Rosenblum, an accountant:

> "It has been my displeasure to meet up with Mr. Willner on several occasions in the course of my practice. I herewith take this opportunity to state that Mr. Willner has demonstrated unprofessional conduct, unbecoming a member of a learned profession, by certifying to the correctness of a financial report he has prepared and submitted to an official Referee, the results of which were based not on facts, but on conjecture and the personal opinion of Mr. Willner.
>
> Furthermore, in October, 1947, while a witness before Official Referee, the Honorable John P. Cohalan, he testified under oath that he was a member in good standing of the New York State Society of Certified Public Accountants. He again repeated this testimony in November 1947 before the same referee. Subsequent investigation disclosed the fact that he was

not a member of said society for many years, and he still is not a member of the New York Society of C.P.A.'s now.

It is therefore my considered opinion that Mr. Willner is not a fit person to be admitted into your honorable body."

Upon receipt of the letter, the Committee's representative talked with Mr. Rosenblum on the telephone and was informed that in certain proceedings before Official Referee Cohalan the applicant had testified on behalf of the plaintiff in an action entitled John Alders and Curtis M. Marx v. Ora W. Grow; that among other things the applicant testified that he was at that time (July 1, 1947) a certified public accountant and was a member of the New York State Society of Certified Public Accountants. The following excerpts were taken by the Committee and subsequently referred to (in its report) from the stenographer's minutes of the applicant's testimony on July 1, 1947 before the Official Referee (CrD 74; Tr. 49):

"*Direct Examination*

By Mr. Windsor:

Q. Are you a certified public accountant? A. Yes, I am.

Q. And are you any—a member of any society of certified public accountants? A. Yes, I am.

Q. What society? A. New York State Society of Certified Public Accountants.

Q. For how long a time have you been a member of the Society? A. Well, I started in 1936 and due to the lapse of my illness I let things lapse. Then I was reinstated and I am a member in good standing today.

Q. I show you this paper, Mr. Willner, and ask you what it is? A. That is my certificate issued to

Accountants showing that I was a member since the sixth of March 1936 and I was reinstated as such.

Mr. Windsor: I offer that in evidence.

The Referee: You don't need it. I will take it without putting it in. Just make it as a statement unless they object to it on the cross-examination. You may want to keep that certificate. Show it to your adversary."

(*Note:* S.M., pp. 238-239. Then followed a colloquy about a slander suit brought by Wilbner against Hermelin for $25,000, reference to which will be made later on in this report.)

October 16, 1947.

"*Cross-Examination*

By Mr. Hermelin:

Q. You testified that you are a certified public accountant, Mr. Wilbner? A. Yes, sir.

Q. How long have you been such a certified public accountant? A. Since January 5, 1936.

Q. And you are a member of the State Association of Accountants? A. The New York State Society of Certified Public Accountants; I am a member.

Q. Are you a member in good standing? A. Yes, I am.

Q. Since when have you been a member in good standing of this Society of Public Accountants? A. I have their certificate since, I believe, 1936.

Q. Have you ever been dropped from membership for any time? A. I did not. I let my dues lapse. But in view of the fact that you raised the question I have got myself reinstated. I am a member in good standing.

Q. When were you reinstated as a member in good standing? A. Oh, a couple of months ago.

Mr. Carew: Your Honor, I think I will object to this line of questioning. I do not think he has to belong to that organization to be a certified public accountant.

Mr. Hermelin: It is a question of credibility.

The Referee: That he does not belong?

Mr. Hermelin. That's right.

The Referee: Would you say that any lawyer who did not belong to the Bar Association was not a qualified attorney?

Mr. Hermelin: If he testified that he did and he did not he would be guilty of perjury, wouldn't he:

The Referee: Take him to the District Attorney then.

Mr. Hermelin: We will prove that.

The Referee: You won't prove that before me. I am not trying anybody for perjury.

Mr. Hermelin: It is a question of credibility. That is the only purpose of my offering it before Your Honor.

The Referee: What was the motion made?

Mr. Carew: I will withdraw the objection, if that is what he wants it for."

(S.M., pp. 288-290.)

In connection with the applicant's statement that he was at the time of his appearance before Referee Cohalan a member of the New York State Society of Certified Public Accountants, a representative of the Committee interviewed Miss Mary C. Tully, the Office Manager of that Society, and received from her the following information: The applicant became a member of the Society on February 20, 1936; was dropped for non-payment of dues March 31, 1940; was reinstated May 13, 1940; dropped for non-payment of dues March 17, 1941; applied for reinstatement on June 20, 1947.

On June 11, 1948, the Committee's representative interviewed Mr. Wentworth F. Gantt, Executive Secretary of the New York State Society of Certified Public Accountants and was informed:

> "* * * that a complaint was filed by a member of the Society concerning his statement, under oath, in the Supreme Court Case of John Alders et al. v. Gros that he was a member of The New York State Society of Certified Public Accountants in good standing having been reinstated as such."

Mr. Gantt further stated that the applicant's application for "readmission to the Society is being held up for further investigation by our Committee on Admissions."

> (*Note:* In his questionnaire verified May 21, 1948, under Q. 20, which asks for the names, addresses, etc., of every group, association, society or organization of which he is or had been a member, the applicant makes the following statement: "N. Y. State Society of C.P.A.s—15 E. 41 St., N.Y.C.—12 years.")

In the slander suit hereinbefore referred to brought by the applicant against Marc Hermelin, the attorney who represented the defendant in the litigation before Referee Cohalan, the complaint was dismissed and judgment obtained against the applicant for $49.50 upon the dismissal of the action on the record on motion, and $40.46 upon affirmance of the order and judgment of the Supreme Court dismissing the complaint on motion.

On February 27, 1948, Mr. Rollins, who represented Mr. Hermelin in the slander action, stated to the Committee investigator that they had been trying to serve the applicant to collect the two judgments but had not been able to do so. Mr. Rollins also stated that the printer who printed the record on appeal had recently telephoned him

and stated that he had not been paid for printing the record on appeal.

(*Note:* In his questionnaire verified May 27, 1948, the applicant referred to these judgments and stated that they had been satisfied but did not say when they were satisfied.)

In a questionnaire issued to the applicant on February 20, 1948, and filed on May 21, 1948, the applicant reported seven cases of civil litigation in which he was involved, and that in one instance he charged Mr. Wieder with simple assault; in another he filed a cross-complaint for simple assault against a man named Silverstein; and a complaint against one Hymie Drath for attempted assault. He also reported that he had borrowed $1080.00 from the National City Bank on which there was still due $270.00 to be paid in three instalments.

V. The June 6, 1948 Hearing (Tr. 44-72).

At the opening of the hearing, Willner was offered an opportunity to make a statement. The Committee indicated it would be "glad to hear anything you have to say as to why the Committee should change its recommendation to the Court" (Tr. 45). He made a statement, which set forth, principally, as his reasons for wanting to be an attorney, the clarification of his reputation and the elimination, in his "own profession", that of a certified public accountant, of the risk of not being allowed to render an opinion that might be construed as a legal opinion (Tr. 45).

The Committee then proceeded to question him as to whether he had testified on July 1, 1947, that he was a member then of the New York Society of Certified Public Accountants (Tr. 46). There was read to him an extract of testimony he had given on direct examination in which he testified he was a member; having become a member

in 1936, letting membership lapse because of illness and then being "reinstated". On cross-examination in the action, he insisted he had been "reinstated" a "couple of months ago" (Tr. 50). Before the Committee, he admitted he had let his membership lapse in the Society in 1941 and had let the matter run that way, until his testimony as to membership was questioned before Referee Cohalan by a Mr. Hermelin. He then decided he was going to have himself "reinstated". He paid his check and appeared before a Mr. Wright (Tr. 51). He assumed that was all that was necessary (Tr. 46); but when he received no notice of any meeting, he wrote them and "the answer came back that my application had not been acted upon by the Committee—it was dormant" (Tr. 46). He went back to see Mr. Wright, his sponsor, who said he would "straighten it out", but that was the "last I heard" (Tr. 46). A girl secretary up there said in view of the fact that he had lapsed his "standing for non-payment of dues, they would have to wait a little while" (Tr. 46). But he had not been forewarned about it (Tr. 46).

He *admitted* that in his May, 1948 questionnaire, he had stated he was a "member" of the New York State Society of Public Accountants (Tr. 52). He justified that statement by the fact that they hadn't taken his certificate back (Tr. 46, 52). He paid only $25 dues; not the dues for the lapsed period (Tr. 52). He has since found out that he "could have been reinstated" by paying the dues for the period (1941 to 1947) when he wasn't paid-up and "wasn't a member" (Tr. 53). After several answers that appeared to be evasive, he stated that he came upon the knowledge as to payment of back dues only within the two weeks preceding his testimony before the Committee (Tr. 54).

He was asked to produce a letter of inquiry he allegedly wrote to the State Society (Tr. 54-55).

Confronted with the text of the letter he wrote in 1939 to Mr. Buchner, he answered (Tr. 56):

"Well, if you have my signature on it I suppose I wrote it."

He did not remember the name Buchner but admitted he "wrote to lots of people" (Tr. 56-57). In substance, he *admitted* that he wrote what had been read to him as the text of the letter to Buchner (Tr. 57). He had a "strong resentment" at that time. He *denied* that he *still* believed what he then wrote. He offered to make a "public retraction" (Tr. 57). His statement as to Committee methods was based on the Committee's failure to forewarn him of the Wieder complaint (Tr. 57). He *conceded* that Wieder's assault charge against him was withdrawn after Willner wrote a note in Court before Judge Cooper *promising* that "he would not annoy him (Wieder) further" (Tr. 59). He offered to supply the Committee with an affidavit by the attorney, named Santangelo, who represented him on the criminal charge, to show that Wieder had run out on ten occasions when the general calendar of the criminal court was being called (Tr. 59, 60). He later supplied an affidavit by Santangelo (CrD 58).

He *admitted* he had brought an action against a Mr. Hermelin *for slander* in 1946; and that the action had been dismissed (Tr. 60-61). He stated he had paid the costs on the motion and on his unsuccessful appeal to the Appellate Division, Second Department (See *Willner* v. *Hermelin*, 73 N.Y.S. 2d 412 [not officially reported], aff'd, 273 App. Div. 816 [1948]). He stated he paid the printing expenses on that appeal within a day of billing (Tr. 62); and offered to produce a receipt (Tr. 62).

He had *no* recollection of the complainant, Barone (Tr. 62-63).*

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* Cf. his 1961 statement, at R. 10.

He conceded he might have sent letters to the Peekskill Evening Star and to residents of Peekskill; to the Justices of the Appellate Division; and to Fred L. Gross (Tr. 64). By reason of Wieder's hearsay accusation and his treatment as a "nobody", he felt he had a right to "fight back" (Tr. 65).

As to his characterization of the Committee as "steeped in stealth", being "cowardly", "unethical" and "political henchmen of a system of greediness", he couldn't say "at that time" that he didn't feel "justified", but asserted "today, I am a little older and a little wiser" (Tr. 65). He was 36 *then* (Tr. 65). He felt hurt. His family was hurt. He couldn't think, talk or work right (Tr. 65-66). But, he composed the letters himself (Tr. 66). He felt that one of the Committee members had "abruptly" disposed of him (Tr. 66).

His last year's gross as an accountant was $11,000 (Tr. 67).

He admitted his characterization of the Character Committee's rejection as one where "the clerk made up their minds for them" (Tr. 68). All he asked was a "little forgiveness" (Tr. 69). One of the Committee members pointed out to Willner "it wasn't a question of personal feeling on the part of any member of this Committee. We don't have to forgive you for anything. We have a responsibility to report to the Court our findings, as to your character and fitness to be a member of the Bar on the basis of the facts before us" (Tr. 69-70).

W. The Interim Committee Report dated November 4, 1948 (CrD. 74).

This report, after referring to the order directing rehearing, dealt with two items, both of which concerned the giving of *false testimony* by Willner. First, the report referred to the fact that, at the June 16th, 1948 hearing, Willner's attention had been called to his testimony before

Judge Cohalan that he was a member of the New York State Society of Public Accountants (p. 1). The report contained an extract of the testimony that had been called to Willner's attention (pp. 1-2). In this extract, Willner had *testified*, that he had been a *member* and *had been reinstated*. The report continued (pp. 2-3):

> "Our investigation discloses that the applicant was dropped from the Society of Certified Public Accountants, and made application for readmission to the Society and that said application is still pending before the Committee on Admissions. The applicant's file at the Society's office discloses that Mr. Wright of Haskins & Sells, who interviewed Willner in connection with his application for readmission to the Society, recommended admission solely on the basis of statements made by the applicant that illness and temporary withdrawal from practice were the reasons for dropping membership in the Society. Mr. Wright stated that he had no knowledge of the claim of the alleged false testimony given by the applicant before Referee Cohalan, to the effect that he at that time was still a member of the Society in good standing."

The report also referred to an *ex parte* statement by Mr. Hermelin, the attorney in the proceedings pending before Referee Cohalan, to a Committee investigator. Mr. Hermelin had apparently stated (p. 3):

> "although he was reluctant to act as a stumbling block to one seeking admission to the Bar, it was his considered and determined intention to place before the District Attorney of New York County the testimony hereinbefore referred to, given by the applicant before Referee Cohalan. He further stated that he would have filed this complaint with the District Attorney except for the fact that the matter was still pending undetermined before the Referee."

The report concluded:

> "From the foregoing, it appears that there are two matters pending at the present time, involving the applicant: first, his application to be reinstated in the Society, which is still undecided; second, the filing of a complaint with the District Attorney of New York County (hereinbefore referred to), charging the applicant with perjury and which has not been filed to date because of the fact that the litigation in which the alleged false testimony was given is still pending and undetermined.
>
> In view of these pending matters affecting the applicant, I am of the opinion that the further consideration of this application be deferred until these pending matters are disposed of. At that time I recommend that the Committee take up for consideration the various communications which the applicant admits having written to judges and members of the Bar, concerning the action of the members of the Committee in denying his application for admission."

X. The November 20, 1948 Hearing (Tr. 73-76).

On November 20, 1948, the Committee resumed its rehearing.

Willner *admitted* he had not yet been readmitted to the New York State Society of Certified Public Accountants. He stated the Society's "Committee hasn't met" (Tr. 73). He *admitted* he *did not disclose* to Mr. Wright, who interviewed him for the Society, "anything in regard to the testimony" that he had given before Referee Cohalan (Tr. 73). He stated that Wright had marked his file "Passed for Admission" (Tr. 74). He stated that a December date had been set for the Society's Admission Committee meeting.

Y. Letter to the Committee, dated May 12, 1950, from its Secretary (CrD 75).

The Secretary of the Committee, on May 12, 1950, wrote the following letter, addressed to one of the Committee's members:

> "The application of Nathan Willner, which was denied by the Committee in November 1938, and on which the Court denied a rehearing in February 1943 but granted a rehearing in February 1948, will be on the June 5th calendar.
>
> The Committee examined the applicant on June 16, 1948, and again on November 10, 1948, and at the latter meeting you recommended that further consideration be deferred pending action by the Certified Public Accountants' Society on Mr. Willner's application for re-instatement therein, and also because Mr. Marc Hermelin, an attorney, had indicated that he would bring to the attention of the District Attorney of New York County the testimony of the applicant in litigation before Referee Cohalan.
>
> The Committee, acting upon your recommendation, deferred consideration to the next meeting. In January 1949 we received a letter from the State Society of Certified Public Accountants stating that Mr. Willner had told them he could not appear before their Admissions Committee in connection with his application for re-instatement, and that if they did not approve his application in absentia they should return his fee and vitiate his application. Their Committee voted not to approve the application without the interview and his application and fee were returned to him.
>
> Incidentally, when the applicant appeared before the Committee on June 16, 1948, he stated that when he decided to be reinstated in the early summer of 1947 he sent his check and that 'The check cleared.'

I talked yesterday on the telephone with Mr. Hermelin, who stated that the litigation has not been completed but that he is less inclined now to submit to the District Attorney's office the record of applicant's testimony wherein he stated under oath that he was, and had been for some years, a member of the State Society of Certified Public Accountants when, as a matter of fact, he had been dropped several years previously.

In view of the fact that Mr. Willner refused to appear before the Admissions Committee of the Accountants' Society and has withdrawn his application for reinstatement, and the further fact that it does not appear that Mr. Hermelin will press any charges against Mr. Willner, I thought you might wish to review the record and make a report at the June 5th meeting.

Therefore, I am sending the old application and related papers in one envelope, and the latest application with petition and related papers in a second envelope.

When you have finished with them, will you let me know and I will send for the papers."

Z. The Committee Report, dated May 31, 1950 Recommending Denial of Admission (CrD 76).

A report was prepared for the Committee by one of its members, dated May 31, 1950. After a review of the prior history of the application, the report turned to an examination of the complaint that Willner had testified falsely, in a civil action, as to his membership in the New York Society of Certified Public Accountants. The letter of complaint was set forth. So, too, was the extract of Willner's testimony which had been called to Willner's attention at the June 16, 1948 hearing. The result of the Committee's investigation was also set forth. The report noted, too, that Willner had, in his May 21, 1948 question-

naire stated that he had for *12 years* been a member of the Society (pp. 1-8).

The report continued, with a review of other details of the history of Willner's application, the hearings and the Committee's investigation (pp. 8-11). It concluded with a recommendation that the Committee adhere to its original decision denying the application. The Committee's reporter expressly stated (p. 11)

> "I am of the opinion that the applicant does not possess the necessary character and fitness for admission to the Bar."

AA. Report to Appellate Division by Committee, dated June 9, 1950, recommending rejection.

On June 9, 1950, the Committee reported to the Appellate Division its determination that Willner's application should be rejected. The report signed by the Committee's vice-chairman and eight other members, stated, in part:

> "The Committee has duly considered the additional papers filed by the applicant, the statements orally made by him on examination before the Committee, and carefully investigated his character and fitness pursuant to Rule I of the Rules of Civil Practice, and it has determined, on the record presented and upon the oral examination of the applicant, that it cannot, under the provisions of the Judiciary Law, certify him for admission to the Bar of this State, and, therefore, adheres to its original decision recommending denial of the application."

This report was transmitted to the Appellate Division by the Committee's Clerk, on June 19, 1950 (CrD 66).

BB. Willner's Attorney Schoenwald, in November, 1950 Copied the Minutes of the Committee Hearings and Sought Access to other Committee Records (CrD 68-69).

Maurice L. Schoenwald, an attorney representing Willner, in November, 1950, was allowed access to and copied "the lengthy minutes of the Committee" (CrD 69). He also requested the Court's permission to copy specified "letters, papers, documents, etc. as in your discretion and in accordance with the rules of the Court you can make available to the applicant or his counsel" (CrD 69). Notations on the attorney's letter indicate most of the items he specified were "available" (CrD 68).

CC. Willner's April 10, 1951 Application (CrD 78-79).

The Court records indicate that on April 10, 1951, Willner made a motion before the Appellate Division for an order (1) directing the Clerk to enter his name as an attorney and counsellor at law on the Roll of Attorneys and Counsellors; (2) directing the Committee on Character and Fitness to file a statement of the reasons upon which the Committee based its refusal to certify him; and (3) appointing a Referee to hear and report upon the evidence taken before, as to whether he possessed the character and fitness entitling him to be admitted.

The motion was denied by the Court without opinion. *No appeal* appears to have been taken from the Court's order, dated May 15, 1951, despite the detailed attack upon the Character Committee's refusal to certify Willner which was contained in the brief submitted to the Court by Willner's attorney, B. Leo Schwarz, predicated upon the failure of the Committee to make factual *findings* (CrD 78, pp. 1-7).

DD. Willner's June 7, 1951 letter to George N. Barrie, Jr. (CrD 80).

On or about June 7, 1951, a letter on the statjonery of Nathan Willner, accountant, appears to have been ad-

dressed to George N. Barrie, Jr. at Princeton, New Jersey; Barrie had been appointed a member of the National Foundation in which he was associated with a member of the Committee, Basil O'Connor. The letter to Barrie, which contains a vitriolic attack on Mr. O'Connor, has been filed with this Court. It is referred to by the Committee in a report subsequently made.

EE. The Motion Returnable November 27, 1951.

A motion for an order admitting him to practice was made by Willner, returnable November 27, 1951.

In connection therewith, a Committee report was filed, which referred to the Committee's prior reports on previous applications; and called attention to the letter referred to in the preceding paragraph (DD, *supra*).

The motion was denied.

FF. Willner's 1954 Petition to the Court for Leave, pursuant to Rule 1, to Renew his Application for Admission, *de novo*.

In March, 1954, petitioned the Court for leave, pursuant to Rule 1 of the New York Rules of Civil Practice, to renew his application for admission to the bar, *de novo*. His petition disclosed the following additional facts 2): he had resided alone at a new address since May, 1953, having procured a divorce *for cause*, against his wife; 6) as of May 15th, 1951, he had been reinstated as a member in good standing of the New York State Society of Certified Public Accountants and since December 11, 1951, had become a member of the American Institute of Accountants; 14) he recited, *verbatim*, a portion of the Committee's report dated 1950 refusing to certify him for admission to the Bar (thus indicating not only had the hearing testimony been made available, but also at least certain portions of the Committee's reports; 16) that after the denial of his April 10, 1951 motion by the Appellate Division which

in part sought to obtain findings from the Committee he had later moved again "by order to show cause, but the Justice (of the Appellate Division) to whom the order was submitted for signature refused to sign it"; 18) since he had last been before the Committee on November 10, 1948, he had continued to practice his profession of certified public accountant; 19) New York Education Law, Article 19 requires of an applicant for such a license that he be a person of "good moral character" and the same Article contains provision for a Committee on Grievances to which all charges and accusations against a certified public accountant of "fraud, deceit or gross negligence" are referred, and no charges have ever been made against him in connection with the public accountant profession; 20) he has been permitted to practice before the Tax Court of the United States for the past 17 years and was also admitted as an agent before the United States Treasury Department in 1928 and is presently so admitted; 21) he fully realizes that admission to the Bar is not a right but a privilege, deems the state to have made a promise to admit persons "of good moral character", yet he finds himself barred from admission "because of an adverse report, based apparently, * * * in the main on unsworn accusations"; 22) there is no announced standard of character and fitness so that in New York a person enters into the study of law wholly in the dark as to whether his past behavior will satisfy the Committee whereas in at least one other State a law student, before commencing study, must pass a character test; 22-a) he contrasted his situation, that of a person who had been engaged in the rough and tumble of "the battle of life," with that of the lily-white average student who came before the Committee without any incidents in his past life. He continued:

> "I fully realize that all which occurred before is now water over the dam. This application is not for a reconsideration of the previous rulings against me.

> Those rulings and adjudications I accept in all humility. This application is analagous to the application of a disbarred lawyer for reinstatement as a member of the bar."

25) then he called attention to the fact that disbarred attorneys have been permitted reinstatement in New York where they had led good clean lives since disbarment; 26) he persists in seeking admission to the Bar after so many unsuccessful attempts because such rejection is an adjudication of record that he lacks the requisites of character and fitness; such adjudication is a blot upon his good name, retarding his accounting practice and affecting his credibility as a witness particularly in the accounting proceedings where the books of fiduciaries have been audited; 27) he recognized that his application for admission on the basis of subsequent good behavior after rejection for "lack of good character" was unprecedented but regarded the lack of precedent not to be strange *because of the rarity of rejections;* 29) and he promised to comport himself with the dignity fitting a member of the Bar (Italics supplied).

GG. The Committee's Memorandum dated March 15, 1954 to the Court Concerning Willner's March 4, 1954 Motion (CrD 81).

After a chronological statement of prior efforts by Willner to be admitted, the Committee, by its then Chairman, in a memorandum to the Court, dated March 15, 1954, reported that:

> "The present application is based upon Mr. Willner's unsupported assertions that for five (5) years his conduct has been above criticism. The Committee has no information on the subject other than Mr. Willner's statements. He has submitted no supporting affidavits."

The recommendation of the Committee was:

> "In the opinion of the Committee Mr. Willner's record is not such as to entitle him to further consideration."

HH. Order dated April 27, 1954 (CrD 83).

On April 27, 1954, the Appellate Division denied Willner's motion for leave to file an application *de novo*, pursuant to Rule 1 (283 App. Div. 871).

II. Resettlement of the April 27, 1954 order (CrD 84).

On May 5, 1954, Willner, by his present attorney, moved for resettlement of the Court's order of April 27, 1954, since it appeared not to be a "final order", from which an appeal could be taken to the New York Court of Appeals. In support of the application to resettle, it was *then* urged:

> "An application for admission is a special proceeding, and denial of the application is an adjudication by the court that the applicant lacks good character. The adjudication is based on a finding of fact by the Committee on Character and Fitness that the applicant lacks good character. The evidence upon which such finding is based, consists in the main, of accusations by individuals, who are not required to be subjected to the test of cross examination. This creates a question of denial of due process which should be determined by the Court of Appeals."

The Appellate Division on May 18, 1954, granted the resettlement requested—to provide that "the application of the petitioner for admission to the Bar was denied" (CrD 84, 85).

JJ. The New York Court of Appeals denied Leave to Appeal from the Resettled Order (307 N. Y. 943, reargument denied 307 N. Y. 944), by orders dated October 21, 1954 and December 2, 1954, respectively.

KK. Willner's 1954 Petition to this Court for a Writ of Certiorari.

On December 29, 1954, Willner applied to this Court for a writ of *certiorari* for a review of the Appellate Division order, dated May 18, 1954 which, he stated, denied his "application for admission to the Bar of New York". His affidavit in support of his motion alleged, in part, that the Committee's findings had been predicated "on unsworn *ex parte* testimony" by two lawyers, with whom he had had business disputes, who were "not required to appear before The Committee, and who "did not confront me (the accused) so obviously I could not subject them to cross-examination", as a result of which he was denied admission, "without due process" (Affidavit of Willner, p. 3).

At the request of the Appellate Division, the New York Attorney General submitted a typewritten brief in opposition to the 1954 petition for *certiorari*. In part, the Attorney General's brief dated January 17, 1955, stated:

> "It is respectfully submitted that the petition should be denied because it is not shown to have substantive merit and particularly because of the lack of diligence which has marked its prosecution. The Petitioner is seeking to compel that which is not a matter of right. He is attempting a belated collateral attack on the 1938 determination. The decisions of the New York courts which are challenged are justifiable on grounds which involve no Federal question."

LL. This Court's denial of *certiorari* in 1955.

On March 1, 1955, this Court denied Willner's petition for a writ of *certiorari* (348 U. S. 955).

MM. Willner's 1960 Petition to the Appellate Division for Leave to file an application for admission *de novo* pursuant to Rule 1 of the New York Rules of Civil Practice.

In his 1960 motion to the Appellate Division for leave, Willner reviewed some of his prior efforts to become admitted and set forth what he deemed to be his then current qualifications. In his petition, he asserted in part:

"g) That, although the Committee on Character and Fitness has twice rejected my application, I now feel that I am much more mature and ripened in wisdom and understanding, and I know that I can establish myself as acceptable to the Committee, because I now understand the situation as well as myself better than ever before. At my early appearances before the Committee, I felt that I was being treated unfairly and unjustly, and *I reacted with great vigor*, which was induced by my anger and frustration. *I wrote letters, which were indiscreet and unwarranted, and unnecessarily strong in language. At subsequent interviews, my frustration and anger grew all the greater and my reactions became stronger.* I then displayed an attitude to the Committee which it could not reconcile with the character requisite for the admission of an attorney to the Bar of this State. I feel that this attitude was the main ground for my rejection; and although I feel that I succeeded in convincing the Committee that various items about which I was questioned were successfully and properly explained by me to show that I had not done any acts which should cause my rejection, *my attitude, having been one of open bitterness and resentment, must have led to my rejection nevertheless.* I know that I can now substantiate my good character and refute any implication to the contrary, if I be but given one more opportunity. I am frankly taking the position that my present character and fitness are important factors

in the consideration of this application. *I recognize, too, that my past life is to be considered in the final judgment.* In an evaluation of the history of human thought and practice, Alfred North Whitehead said, 'The proper test is not that of finality but of progress.' I ask the Court to apply this test to your petitioner. I most sincerely feel that at this date I can demonstrate to the Committee on Character and Fitness, and to this Court, that I should be favorably recommended." (Italics supplied)

NN. Denial by the Appellate Division of Willner's 1960 Petition for Leave (12 A. D. 2d 452).

On November 1, 1960, the Appellate Division, denied Willner's motion for leave, without opinion.

The Instant Proceeding

In May, 1961, Willner again moved for leave, pursuant to Rule 1. The papers with relation to that motion constitute the printed record which he has had prepared for this Court.

A. The 1961 Petition to the Appellate Division for Leave.

The 1960 petition stated that the Committee's determinations made in 1938 and 1950 had been made "without stating any sufficient reason, excuse or standard" (R. 3). He also stated that his effort to obtain a statement of reasons in 1951, by motion, had failed; and that motion had been denied, without *opinion* (R. 3-4). No reasons were given him, either, for the denial of his 1954 and 1960 petitions for leave. Nor did *this Court* give any "reason excuse or standard" for denying his prior application for a writ of *certiorari* (R. 4).

The *portion* of the petition setting forth the *facts* which he believed warranted the granting of leave brought up new charges of bias, and prejudice against members of the Committee and the Committee's Clerk (R. 5-10).

It raised a question as to the accuracy of the Committee's hearing transcript (R. 8). But, it also disclosed that *two years* previously he had been able to have a Bar Association representative obtain access to "my entire file". That representative allegedly told Willner there was "*nothing*" in the record or file or attending documents that could possibly impeach his character (R. 11).

The Appellate Division must be presumed to have had a different conception of the Committee's records, for it again denied his petition, without opinion. 13 A. D. 2d 956. And then denied him leave to appeal to the Court of Appeals (R. 16).

Willner then moved in the Court of Appeals for leave to appeal to that Court. The Court granted the motion, upon the basis of an affidavit by Willner, that the Character Committee in rejecting him had relied "wholly upon a personal impression" (R. 19) and that the record in this proceeding would show that the Committee had reported adversely to his admission mainly because of accusations contained in the letters of two attorneys, submitted *ex parte* by them and without affording Willner an opportunity to confront or cross-examine them (R. 20-21). *No mention was made in the application to the Court of Appeals of Willner's own failure to submit accurate, truthful and complete information to the Committee or of his own false testimony.* But upon his motion papers only, the Court of Appeals granted leave (R. 23).

The Court of Appeals did *not* request the Attorney General to participate in the argument of Willner's appeal to that Court. On March 6, 1962, it did, however, request the Appellate Division to "forward your complete file relative to the above case" (CrD 93). The file was sent and received by the Court of Appeals a few days later (CrD 94-96). Argument of the appeal in the Court of Appeals was presented only by appellant's counsel. Nevertheless, the Court of Appeals, with the Appellate Division file

before it, unanimously affirmed the Appellate Division order denying Willner's petition for leave (R. 25; 11 N. Y. 2d 866). The appellant having raised constitutional questions relating to due process, before the Court of Appeals, that Court amended its remittitur to indicate (R. 26-27):

> "Upon the appeal herein there was presented and necessarily upon a question under the Constitution of the United States, viz: Appellant contended that he was denied due process of law in violation of his constitutional rights under the Fifth and Fourteenth Amendments of the Constitution. The Court of Appeals held that appellant was not denied due process in violation of such constitutional rights."

Statement Concluded

"The foregoing lengthy summary of the record has been deemed necessary by reason of the inconvenient form in which a large portion of the record in this case is being presented to this Court. Enough has been shown, by our summary, we submit, to alert this Court to the fact that the actual record in this case does not present or require consideration of the constitutional issues asserted in the petition. The hair-raising allegations of the petition may have led this Court to assume jurisdiction. Careful analysis of the record will, we submit, lead this Court to the conclusion that neither the Committee nor the Appellate Division has been interested in *adjudicating* the collateral issues presented by various complaints which were filed against Willner.

The primary interest of the Committee, from the start, related to *Willner's own veracity,* in dealing with the questions listed and the information requested by the Committee's questionnaire. *Willner's own replies* furnished a *sufficient* basis for the Committee's judgments. It was clearly unnecessary for, and there is no clear showing that

the Committee did, in fact, decide issues against Willner, which were unsupported by his own admissions of untruthfulness.

The record indicates that, at times, Willner appeared to understand that the Committee's concern was in *his* truthfulness. What appears to have escaped Willner, at various other times, is the realization that it was *unnecessary* for the Committee, in concluding that his concealments were *intentional*, to ascertain that Willner had been *guilty* of the charges made against him. It was sufficient for the Committee to ascertain that he was *involved in a dispute* which he wanted to conceal.

After the concealments were discovered, Willner *admitted* the existence of the various disputes. It was not unreasonable or arbitrary for the Committee to infer that Willner, by reason of the *existence* of these disputes, had purposely not disclosed the facts which were omitted by him from his questionnaire. Sufficient *motive* for concealment by Willner was supplied by what might be deemed *his desire to avoid the risk* of having the Committee, upon a complete investigation, determine that *he* had been guilty of misconduct. In other words, the Committee needed to go no further than to determine that Willner had a reason to and was, in fact, seeking to thwart rather than to aid the Committee's investigation.

POINT I

Although appellant presented to the Court of Appeals questions as to federal due process and even though the Court of Appeals has amended its remittitur to certify that it had "necessarily" passed upon those questions, the fact remains that the order being reviewed by the Court of Appeals was merely a *discretionary* order. Even if this Court were to accept the Court of Appeals' certification, the fact also remains that the record before the Court of Appeals showed that the appellant had failed, at an appropriate time, to present his constitutional claims.

(1)

We recognize that, ordinarily, this Court will attribute great significance to a certificate by a State court that it has "necessarily" passed upon a federal constitutional question. See *Herb v. Pitcairn*, 324 U. S. 117, 127 (1945); Cf. *St. Nicholas Cathedral v. Kedroff*, 302 N. Y. 1 (1950), *remittitur amended*, 302 N. Y. 658 (1951), rev'd 344 U. S. 94, 97 (1952), where *both sides* have concluded that the judgment *could not* be sustained on state grounds. We must also recognize, however, that this Court has not regarded its jurisdiction to extend to cases where the disposition of the matter sought to be placed in review *may* have been predicated on a nonfederal ground. See the recent note, entitled "Supreme Court Treatment of State Court Cases Exhibiting Ambiguous Grounds of Decision". 62 Col. L. Rev. 822 (1962). See also *Stembridge v. Georgia*, 343 U. S. 541 (1952); *Black v. Cutter Labs.*, 351 U. S. 292 (1956); *Durley v. Mayo*, 351 U. S. 277 (1956).

(2)

The very wording of the appellant's petition, pursuant to Rule 1 of the New York Rules of Civil Practice, for "leave" to file an application for admission to the New

York Bar, clearly indicates the *discretionary* nature of the relief which was sought. Under the circumstances of the record, which undisputedly shows that the appellant's two prior applications, made in 1937 and 1948, had been denied and *not appealed*, it would seem that the only question which actually may have been left for determination by the Court of Appeals was whether the Appellate Division had "abused its discretion" in denying the appellant leave. We read the "no opinion" affirmance by the Court of Appeals of the Appellate Division denying leave to be the equivalent of a negative finding on that question.

(3)

It is also clearly possible that the Court of Appeals decision may have been predicated upon the ground that the appellant failed to assert *at a proper time* his ground of federal error—the asserted denial of due process, by reason of the Committee's alleged failure to permit him to "confront" and cross examine Wieder and Dempsey (Cf. R. 2-12, the allegations before the Appellate Division; with R. 18-23, the grounds asserted before the Court of Appeals).

(4)

For example, the Court of Appeals, with the complete file before it was in a position to question the timeliness of the present petition in the light of Willner's allegation therein (R. 5-6) that he had been promised "confrontation" as long ago as 1937 by the then Chairman of the Committee.

(5)

Or the Court of Appeals may have come to the determination that the very allegations of the petition, in the light of the complete record, showed that Willner had *deliberately* suppressed information which he could and should have supplied to the Appellate Division and the

Committee because it was available long ago. We refer especially to the allegation of the petition in which he asked the Appellate Division (R. 4):

> "to consider some of the background which is stated in this application for the first time."

(6)

Or as to his allegation that the Committee secretary had "intentionally" distorted the minutes of his hearing, the Court of Appeals, with the complete file before it, may well have questioned his *delay* in making this assertion when the file showed that he had authorized an attorney, as early as 1947, to examine the Committee's files (Cr. D. 64, 65); and as early as 1950, had requested permission to allow his then attorney to copy the Committee's minutes (Cr. D. 68, 69). His own attorney's letter indicates that the minutes were copied for Willner in 1950 (Cr. D. 69, p. 3).

(8)

Indeed, the Court of Appeals may have deemed Willner guilty of *laches*, in failing sooner to disclose "the hardly believable activities" of the Committee's secretary, narrated in the petition, with relation to the settlement of Willner's litigation with Dempsey's client (R. 8-9). Indeed, the Court of Appeals may have deemed Willner's willingness to submit to the secretary's alleged pressure, to be an indication of lack of the moral character and fitness required of an attorney.

(9)

Or the Court of Appeals may have decided that it was Willner's duty promptly to disclose that his "proof was sidetracked" by two named members of the Committee (R. 10).

(10)

Furthermore, with the transcript before it, the Court of Appeals may have determined that Willner had testified *falsely* when he had testified, contrary to the admitted fact, that he had been *reinstated* as a member of the New York Society of Certified Public Accountants, at a time prior to his actual reinstatement. Such a finding would be at odds with the allegation of the petition that "Many thousands of words were spent in discussing what was a mere technicality" (R. 10).

(11)

Finally, the Court of Appeals may have completely *rejected*, with the full record before it, the broad allegation of the petition (R. 11):

> "Though nothing has ever been cast on me that I could not prove to be false, malicious and conjurred up by the two members of the Committee, Mr. Basil O'Connor and Mr. Millard Ellison."

The Court of Appeals had ample ground, in 1962, for declining to afford petitioner an opportunity, at a new hearing, to prove that, a generation or so before, members of the Committee and its secretary had been guilty of misconduct, particularly when he had been making similar charges as to those gentlemen for more than 20 years (R. 11-12).

POINT II

Under New York law there is no absolute right to admission to the Bar. Good moral character is a prerequisite to admission. Neither the substantive requirement of good moral character nor the substantive requirement that the New York courts be satisfied as to the character of the members of the New York Bar has been changed by any of the recent decisions of this Court. Nor has this Court held that procedural due process requires that investigations into an applicant's character be undertaken only by means of a trial-type hearing.

(A)

We submit that we have already established (*supra*, pp. 3-6, 8-9), that the substantive law of New York requires that an applicant's good character and fitness be established before he is admitted to the New York Bar. The appellant has admitted, moreover, that an applicant in New York "is required to prove two issues, his knowledge of law and his good character" (Br., p. 5). His argument is based upon the assumption that Bar membership is not merely a privilege but a "right" (Br., p. 4). In view, however, of the appellant's concession (Br., p. 5) that he is required to prove his good character, we do not deem it any more necessary in this case than it was in *Schware* v. *Board of Exgminers of New Mexico*, 353 U. S. 232 (1957), to enter into a discussion of whether the practice of law is a "right" or "privilege". We believe it is sufficient, however (to paraphrase the Court's footnote to the *Schware* majority opinion, 353 U. S. 232, 239, footnote 5) to say that "a person can be prevented" from practicing "for valid reasons". Failure to establish good character, we submit, is such a reason.

(B)

The basic thrust of the appellant's brief (pp. 4-5) is that the Committee's refusal to certify Willner's character

was arbitrary. This conclusion is predicated upon the assumption (Br., p. 5) that Willner's character and fitness were determined by three members of the Committee whose decision was "questionably based on the *ex parte* charges made by the lawyers, Wiedner and Dempsey". The record which we have outlined above demonstrates that the basic assumption of the appellant's brief is false. The record clearly shows that the Committee's determination was predicated upon Willner's own questionnaires, affidavits and "the record" which he himself made upon his appearances before the Committee and by his admitted conduct elsewhere. Whenever the Committee received information *ex parte* or through its investigators, Willner was then given an opportunity to admit, deny or offer an explanation of the material involved.

(C)

A State's power to prescribe "high standards of qualification such as good moral character" was recognized by this Court in the *Schware* case (*supra*, 353 U. S. at p. 239). The only limitation set down even there as to a State's powers was that "any qualification must have a rational connection with the applicant's fitness or capacity to practice law" (*idem.*, p. 239). Here, the Committee apprised the petitioner, at the very outset, in the form of the questionnaire he was required to fill out, that his fitness and character would be judged by the completeness, truthfulness and accuracy of his answers to the Committee's questions (*supra*, p. 3). Neither truth nor accuracy would appear to be an unreasonable gauge of character.

The applicant was warned that his "ability to express full and responsive answers" would "be considered an element in the determination of fitness". Again, a standard was clearly set forth by the Committee which may not fairly be described as unreasonable.

The *Schware* case held that due process had been violated because there was no reasonable basis in that record for

a finding that *Schware* had not shown good moral character. We need not review the relatively meagre evidence on which the New Mexico Board had rested its finding. It is sufficient, we submit, that this record shows that repeatedly Willner failed to make the truthful, complete and accurate answers to the Committee's questions, which the Committee required to be given with relation to such relevant subjects as employment and litigation. These failures were admitted by Willner himself, before the Committee. It was not essential, to disqualify him, that the Committee resort to allegations that had been made by other persons against Willner. Nor does it appear from the Committee's reports that the Committee deemed it necessary to do so.

Mr. Justice FRANKFURTER, in the *Schware* case, noted that qualities of "truth-speaking" must be exacted from members of the legal profession. He also related the long history of internal control by the profession of those who should enter it; and recognized that "moral character" has been "the historic unquestioned prerequisite of fitness" (353 U. S. 232, 248). Since we do not have before the Court any contention that New York in this case has employed legislation of a discriminatory character, we submit that we can appropriately call this Court's attention to the concession made in the *Schware* case by Mr. Justice FRANKFURTER as to the State's powers. First, he stated (p. 248):

> "Admission to practice in a State and before its courts necessarily belongs to that State."

Then he cautioned (p. 248):

> "It is beyond this Court's function to act as overseer of a particular result of the procedure established by a particular State for admission to its bar. No doubt satisfaction of the requirement of moral character involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the applicant for admission, a judgment of which

> it may be said as it was of 'many honest and sensible judgments' in a different context that it expresses 'an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth.' *Chicago, B. & Q. R. Co.* v. *Babcock*, 204 U. S. 585, 598. Especially in this realm it is not our business to substitute our judgment for the State's judgment—for it is the State in all the panoply of its powers that is under review when the action of its Supreme Court is under review."

In *Konigsberg* v. *State Bar*, 353 U. S. 252 (1956), relied on by the appellant (Br., p. 5), the Court stated that the questions asked of the applicant did not relate to "his honesty, trustworthiness, or other traits which are generally thought of as related to good character" (353 U. S., at p. 269). *Per contra*, here the questions asked related to his *truthfulness*. On his own admissions, the applicant had not been truthful, in many respects. In the first *Konigsberg* case, there was a "refusal to answer" from which the Court concluded "the State would not draw unfavorable inferences as to his truthfulness, candor or his moral character in general" (353 U. S. 252, 270). Here, the applicant did not *refuse* to answer. He supplied incomplete and inaccurate answers which, the Committee could reasonably find, were calculated to *withhold* information from the Committee as to matters in which it had indicated an interest—litigation and prior *employment* by a lawyer. Even a refusal to answer would have been more candid.

The significance of an applicant's responses in *thwarting a full investigation* into his qualifications was emphasized by this Court's decision in *Konigsberg* v. *State Bar*, 366 U. S. 36 (1961). In that second *Konigsberg* case, it was held that the Fourteenth Amendment's protection against arbitrary State action did not forbid a State

from barring an applicant so long as he refused to answer questions "having a substantial relevance to his qualifications" (p. 44).

In the second *Konigsberg* case, this Court sustained the validity of a State requirement that an applicant for admission to the Bar bears the burden of proof of "good moral character" (366 U. S. 36, 40). As Mr. Justice HARLAN noted, Committee evidence may result from (*supra*, pp. 41-42):

> "the Committee's own independent investigation, from an applicant's responses to questions on his application form, or from Committee interrogation of the applicant himself. This interrogation may well be of decisive importance for, as all familiar with bar admission proceedings know, exclusion of unworthy candidates frequently depends upon the thoroughness of the Committee's questioning, revealing as it may infirmities in an otherwise satisfactory showing on his part."

In substance, the second *Konigsberg* case held that a State could refuse to admit an applicant who "refused" to fill the "gaps" in the evidence presented by him which the certifying agency considered should be filled (366 U. S. 36, 45). Willner's "gaps" were merely brought to our Committee's attention in a different fashion. Only after the Committee's attention was brought to the existence of the gaps, did he admit their existence.

If Willner had frankly, openly and completely set forth the history of his employment, his disputes, his litigation, the information so supplied like all the other information supplied to the Committee, would have been required to be kept confidential, within the limitations of New York Judiciary Law, § 90 (*supra*, pp. 7-8). A factor which disturbed Mr. Justice BLACK, in the second *Konigsberg* case (366 U. S. 36, 72), the omission of any requirement that

information given the Committee be treated "as confidential", is, therefore, not present here. In New York the information supplied to the Committee is so carefully guarded that except by way of an abstract of the prior court proceedings set forth in the brief opposing certiorari, the Committee's files were not made available to the New York Attorney General until after this Court had granted certiorari. It was only this Court's writ which opened to the public, as part of this Court's records, the information which has been hereinabove set forth—as to Willner's untruthfulness, lack of candor and evasiveness.

In re Anastaplo, 366 U. S. 82 (1961), interpreted (p. 88) the second *Konigsberg* case to be a holding that it was "not constitutionally impermissible for a State legislatively, or through court-made regulation as here and in *Konigsberg*, to adopt a rule that an applicant will not be admitted to the practice of the law if, and so long as, by refusing to answer material questions, he obstructs a bar examining committee in its proper function of interrogating and cross-examining him upon his qualifications." Further, he interpreted *Konigsberg* as holding that the State's interest in enforcing such a rule even outweighed any deterrent effect it might have upon freedom of speech and association (366 U. S., at p. 89). In this case, we do not even have present the First Amendment problems, which the majority "balanced" in the second *Konigsberg* and *Anastaplo* cases. Pertinently, however, we may cite, as to any evidence favorable to Willner, what Mr. Justice HARLAN said in *Anastaplo* (366 U. S., at p. 95):

> "there is nothing in the Federal Constitution which required the Committee to draw the curtain upon its investigation at that point. It had the right to supplement that evidence and to test the applicant's own credibility by interrogating him."

In *Anastaplo*, the Court also resorted to an examination of the Committee's report, before concluding that the Committee and the Illinois Supreme Court had regarded the petitioner's "refusal to cooperate in the Committee's examination of him as the basic and only reason for a denial of certification" (366 U. S., at pp. 95-96).

In *Anastaplo* the majority concluded (p. 96) with their statement of understanding that "Illinois' exclusionary requirement will not continue to operate to exclude Anastaplo from the bar any longer than he continues in his refusal to answer." Our case is somewhat different, since it does not involve a candid refusal. But it should be noted here that under Rule 1 of the New York Rules of Civil Practice, the door remains open to further applications by Willner, when and if he is able to persuade the Appellate Division to give its consent.

In *Cohen v. Hurley*, 366 U. S. 117 (1961), this Court again, as in the second *Konigsberg* case and in *Anastaplo* (*supra*, pp. 67-69), held that, even though a State could not *arbitrarily* refuse a person permission to practice law, it was not capricious to *disbar* an attorney who refused, on Fourteenth Amendment grounds, to *cooperate* in a court's effort to expose unethical conduct *even though it possessed no evidence of wrongdoing on his part*. So, too, as to Willner, it was unnecessary for the Committee to find that Willner was guilty of any of the charges made against him. It was sufficient that he obstructed the Committee's inquiries at the various times we have noted by *failing to furnish information required by the Committee*.

POINT III

Due process did not require that the Committee permit the applicant to confront and cross-examine persons who had furnished information to the Committee, since the Committee was not resolving the issues existing between the applicant and such persons. The Committee was interested in whether Willner had, in the information which he purported to supply the Committee, answered, as required by it, "fully, truthfully and accurately".

Appellant's argument as to cross-examination is broad, though short (Br., p. 6). Its brevity renders it as dangerous as most over-generalizations. We need not question the general desirability of affording *litigants* a trial-type hearing as to pertinent issues. But admission committees are not so constituted that they need pursue *every* collateral issue that be developed by an applicant's contradictory statements. Essentially, they are investigating committees in search of facts. Their facilities for conducting an *independent* investigation of its own, into an applicant's qualifications, are extremely limited, or, as Mr. Justice HARLAN observed in the second *Konigsberg* case, they "not infrequently" have "no means" to investigate (366 U. S. 36, 42). Basically, they must depend on information supplied by the applicant himself.

Just as the conception of "due process" in a disbarment case differs from that which must prevail in a criminal case, we urge that, *a fortiori*, the standards of the criminal law may not be held to control the investigation of an application for admission. As to an applicant, the Committee is not, as in the case of disbarment, stripping a person of any "vested right." *Ergo*, the applicant's position is weaker. We feel warranted, therefore, in adopting, as an answer to the appellant, what was said in *Cohen* v. *Hurley*

(*supra*, 366 U. S. at p. 127):

> "These bases for affording a procedure in such judicial inquiries different from that in criminal prosecutions are more than enough to make wholly untenable a contention that there has been a denial either of due process or equal protection."

Moreover, it has not been the practice of the Committees in New York to rely upon any *ex parte* statements. Where adverse facts appear the applicant's questionnaire, the Committees' investigation or other information, the applicant is given a hearing with respect to these adverse facts. We are told that no applicant is ever turned down on *ex parte* information. Any rejection is on the explanation and the testimony of the applicant himself regarding the adverse information.

Conclusion

It must be clear from the record of the hearings that the applicant was long ago made aware of the fact that it was his own non-disclosure of material facts that prevented the Committee from being satisfied as to his character. These matters did not relate to political beliefs. They did not relate to any claimed privileges against self-incrimination. They related primarily to the characteristics of veracity, candor and trustworthiness. The complaints against Willner were used to test these qualities, as the Committee reports show. Those reports show that the only other matters which received substantial attention related to letters which he admittedly wrote, which were obviously written in anger and showed *little regard for the reputations of other persons*. They, of course, as his own writings, were clearly entitled to be regarded with relation to his character. *In re Latimer*, 11 Ill. 2d 327, 143 N. E. 2d 20, cert. den. and app. dism. 355 U. S. 82 (1957).

Upon the record in this case, we submit that there is no showing that the Committee proceeded in disregard of due

process as that term has historically been used in connection with the investigation of the qualifications of a would-be attorney. *Cohen* v. *Hurley*, 366 U. S. (*supra*), at pages 129-130. On the contrary, Willner long ago, was fully apprised of the complaints filed against him and given a complete opportunity to negate or explain them.

The order of the Court of Appeals should, therefore, be affirmed.

Dated, New York, N. Y., January 25, 1963.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the Appellee.

PAXTON BLAIR
Solicitor General

DANIEL M. COHEN
Assistant Attorney General

APPENDIX B-1

March 23, 1939.

Mr. Julien D. Cornell
1 Wall Street
New York City

Sir:

"In welcoming the Neophytes to the Legal Profession, will you please be kind enough to explain to these people why I was not one of the successful candidates?

"Would you point out to them the cowardly attribute that is manifestly concerned with a body of men who monopolize the very existence of a human being endowed with learning and ambitions, devoid of any personal aggrandizement that the Character Committee reaps?

Do you know of any system of jurisprudence with but any taint of justice, where a judgment is rendered without any reason, but merely steeped in stealth?*

When you have done that, could I, the victim, be made aware of the admeasurement of administration of justice whereby my adverse decision was reached?"

Respectfully submitted,

(Signed) NATHAN WILLNER
B.C.S.—LL.B.—LL.M.—C.P.A.
521 Fifth Avenue
New York City.

*Letter from Joe (the Clerk) Murphy dated February 27th, 1939.

APPENDIX B-2

(Copy)

February 15, 1939.

Editor of the Evening Star
Peekskill
New York

Sir:

My attention has just been directed to the Friday, February 10, 1939 issue of your worthy paper, by several serious minded citizens of Peekskill, for me to express my views to you concerning a report appearing on the very first page headed "Get Good Start—Dempsey Tells Boys."

To think and reflect upon that heading alone is a cause for so much amazement. Dempsey of all people! Standing before a group of Boy Scouts, mind-you, handing out some of his worst palaver, is at best an insult to those of Peekskill that rate themselves as having any intelligence at all.

Mr. Editor, you knew as well as all the others surrounding him, that the only reason Dempsey was there was for POLITICS solely. Is it not fair to comment upon the fact that there are real worthy *Scouts* in Peekskill who have devoted their valuable time, gave unstintingly of their meager funds, for an ideal American institution like Boy Scouts. What besides a few paltry side dollars has Dempsey ever contributed to American Ideals, to genuine leadership, to community welfare.

"Dempsey got a good start." That's the heading that should have come forth. Those poor kinds there weren't members of a palatine family; they won't be given fancy educational facilities—charge accounts for clothes—automotive transportation; then topping that all—a large inheritance, a lucrative law practice and a saddled political buggy, that drove him clear into White Plains as the office boy assistant District Attorney.

Appendix B-2.

What even chance can these children match with such a "good start." Who can tell which one among them would if given the privilege of some learning, rise to an immediate position for the State tho they had the learning of a Blackstone; the bleakness of the fathers existence would weigh heavily on their chance to rise. Yet he so callously quotes "The goal you reach depends on how you start." My dear Editor, you permitted that parastic paraphrase to besmirk your paper without the least comment of its begrimed irony.

Speaking on occasions of this kind has its marked effect. Not every one of your readers are from Peekskill and understand the circumstances too well. Outsiders who may be picked by Dempsey as a juror in his negligence practice, may signify that Dempsey was honored by this gathering (whereas in fact it was only then the machinations of a few political henchmen), with this result, that the juror may be inclined to believe everything that Dempsey from outside manifestations stood for.

His report of the crime situation as effects Boy Scouts was so shallow and obvious it was muddy. Of course it was a preconceived expression of one thing—*business:* Dempsey might have said a little less subtley but more poignantly "So in case you are ever held for one charge or another—Dempsey is the name, I know the ropes."

Dempsey goes on to state how fortunate the boys are that they are here in America, under American ideals. He should have stated further that their fathers are very fortunate to have Dempsey at the dinner and not in his office. It gave them a little mental relief from the fact that somebody may have an accident cause against them and that the aggrieved abated finding his way into Dempsey's office for at least that afternoon. His virtual monopoly of the accident business in Peekskill and the verdicts are appalling to any father present at the dinner.

Jim Dempsey's conscience apparently has readily overcome the *frame up* he perpetrated upon a father of two

children who were schooling here in Peekskill. This father was a four degree man, ambitious, good and honorable. While married he strove to greater potential heights, not at the cost of an insurance company or some unfortunate, but thru his own efforts, and that was to become a lawyer.

It was Dempsey whom this father first exposed, as having passed over to his own client, title defective to property that the client bought with Dempsey as the representing attorney.

It was Dempsey who asked this father to manipulate a financial statement to the bank, *where Dempsey was a Director*, which this father flatly refused to certify as a Certified Public Accountant.

It was Dempsey who sought to concoct "another method" of garnering a financial statement thru some maneuvers which this father exposed again and met with Dempsey's veiled Threat.

It was Dempsey who trumped up a lawsuit against this father, suing this father under a sham and pretext when Dempsey's case was obliged to go "out of the window."

It was Dempsey who then realized that the easiest method for a coward to pursue was to get influence to overcome this father.

It was Dempsey who manipulated to have the father called to the clerk's office of the Committee on Character and Fitness, where the clerk demanded Dempsey to be paid his pound of flesh.

It was Dempsey who turned about to the Character Committee on Admissions to the Bar after this father struggled through this weary depression to become an admitted lawyer and there committed mayhem on the father because:

It was Dempsey who had the political connections so securely locked in that he prevented this father's admission to the Bar now *two years*, and this father has not as yet received any foreboding as to the consequence.

Appendix B-2.

It was Dempsey who committed this father to a mental concentration camp for these two years, and reduced this father to penury and disgrace.

It was Dempsey who will continue to do these things so long as you make him principal speaker at any cost.

What a travesty for scoutdom to have a principal speaker talk about the relationship of father and son so callously when way back in the still, small annals of Dempsey's conscience is a story of a father whose ambition Dempsey maimed by dirty chicanery. A father of two children, who slaved through law school, did research in law, got 4 degrees in education, passed the Bar Exams and was to become a grand example of fatherhood to a son whose daily physical life was tortured by asthma, only to find an influential trickster like Dempsey had struck him a yellow blow before the Character Committee.

That fathers' case is still pending before the committee two years now—but Dempsey has not relented nor even shown signs of what any human father would do. Why? Because Dempsey fears the TRUTH and wants MONEY.

Why can't there be Real Scouts at a meeting so sacred to American ideals—not sacradotalism conferred upon a Mercenary hystricomorphic.

Respectfully,

Nathan Willner
B.C.S., LL.B., LL.M., C.P.A.
521 Fifth Avenue
New York City.

APPENDIX B-3

NATHAN WILLNER
Certified Public Accountant

April 7, 1939

521 Fifth Avenue
New York City

Hon. Francis Martin
Presiding Justice,
Appellate Division, First Department,
New York City.

Sir:

For over *two years* my application before the Character Committee had been pending.

There were some few sittings before five men at which I attended from time to time, but on each occasion they took on a more peculiar aspect, steeped in some fine spun sophistries that were so obviously prejudicial, that the subtlety they intended, were limp from loss of vitality.

It started with a private inquisition conducted in the office of Mr. Joseph Murphy, the clerk, at 51 Madison Avenue, concerning my activities with the Ku Klux Klan, though I was raised by Orthodox Jews on the lower east side of New York.

The situation at the first meeting of the Committee parried itself through a most peculiar charge based on the rankest hearsay, and a promise of a compensation in *six days* that never materialized.

Then the ending off with *my inquiry* as to when the Committee would call me again, only to receive a letter in reply for the *very first time* that my application had been rejected.

No reason—no excuse—nothing. Five men with a collected experience of about 150 years, jockeyed and bandied

my name about for two full years before the clerk made up their minds for them.

Manifestly incredible, but true! Especially after I am reliably informed that before any such final decision is made, whereby the sub-committee takes a man's career from him, he is given a living chance before the Committee as a whole.

That living chance is what I now plead for. There is nothing on my conscience that I am afraid or ashamed of. I did nothing wrong, other than to stand up as a certified public accountant and prevent a "Coster Case" from formulating over my signature at the behest of a political satellite of Westchester County. That is the essence of the refusal, nothing else.

Perhaps there are methods by which this issue could be brought to the forefront, but the injustice heaped upon me has left me penniless—bedraggled; my family was thrown into the street; my children were taken in by my mother-in-law; my wife has a furnished room, and I, wander aimlessly about trying to find the time when the crown of thorns will be lifted.

Respectfully yours,

(Signed) NATHAN WILLNER.

APPENDIX B-4

Murray Hill 2-6135

NATHAN WILLNER
Certified Public Accountant

521 Fifth Avenue
New York City
June 2nd, 1939

Mr. Fred L. Gross,
16 Court Street,
Brooklyn, N. Y.

Dear Sir:

The New York Times of May 28, 1939 announces the fact that His Excellence Governor Lehman has seen fit to call upon you for your worthy contribution of legal knowledge to the Survey Committee on Quasi Judicial Boards. It is most commendable.

May I be privileged to bring to your attention the fact that nothing can be of greater value to the true democratic principals of our government based upon the proper administration of justice than the COMPLETE ELIMINATION of that QUASI JUDICIAL body known as the CHARACTER COMMITTEE on admissions to the Bar.

In words of Justice Pecora in his book on "Wall Street Under Oath", there is nothing more definitely descriptive or apropos to this Character Committee than his words "The old regeme of unlimited license may be said to have definitely come to an end. The testimony had brought to light a shocking corruption in our . . . system, a wide-spread repudiation of old fashioned standards of honest and fair dealing, and a merciless exploitation of the yicious possibilities of . . . chicanery. The public had been deeply aroused by the spectacle of cynical disregard of fiduciary duty on the part of many of its most

respected leaders; . . . who conveniently subordinated their official obligations to an avid pursuit of personal gain . . ."

I might add too, in Justice Pecora's words, that it "is in the nature of individual benefit of their members." And later on he states something of "Legal Chicanery and Beneficent Darkness."

There isn't a thing in those words on the exposè of "Wall Street Under Oath" that doesn't befit the Character Committee, and I am ready, AT MY OWN EXPENSE AT ANY TIME CONVENIENT TO YOUR NEWLY FORMED GROUP, to give testimony of the experience that I had to be subjected to, and the suffering that was heaped upon me—not alone for myself, but upon my aged father and mother—my wife, who grayed and is ill today—my children, who were taken in after my family were thrown into the street for non-payment of rent—my sister and her family, who became janitors in order to hold their brood together.

Perhaps you may think this experience, after having four degrees append to my name, has left me vicious and perhaps free to make any unsupported statement. Then I take Judge Pecora's word, sentence by sentence, and show to you that even though that premise may be that befitting of cowards, mine is JUSTICE and properly so.

UNLIMITED LICENSE: The Character Committee today can make a candidate appear before them as many times as it pleases—at intervals as it wants, no matter how long a period of time elapses between these intervals—then conclude that they are "still investigating"! Investigating what? Well, they just don't have to give a reason.

A SHOCKING CORRUPTION OF OUR SYSTEM: — The members of the Committee are absolutely unqualified and unequivocally POLITICAL appointees. They are put there to exer-

cise their quasi judicial function because of the dictates of the presiding justice of the Appellate Division. Just imagine what opportunity there is to the same Justice that put these men in their castles.

Repudiation of Old Fashioned Standards of Honest and Fair Dealing: — The Character Committee has never in all these years, set up a governing standard by which candidates for admission to the Bar can be admeasured. They can refuse admission to a candidate his inaljenable right to practice on some disparaging theory, like the color of his necktie, if it so desired. No one is to say to the contrary, as to what constitutes a good admittant and a rejective one. The Committee reasons that out for itself Alone. Just imagine the many things that are abnoxious in this world today; that poison mens' minds, that instill prejudices and hatreds everywhere in one man's mind—then multiply that by the number of men on the Character Committee, and you have a rough idea of why the Character Committee can reject a candidate. Add to that religious intolerance—idealogies—isms, and a few other microbes which effect the brains of the underlings, secretaries and stooges through which this committee functions, and certainly the aspirations, ideals and cannon ethics look like lilies stuck in a dung heap.

Merciless Exploitation: — Need I say more than to indicate that the members of the Character Committee are working under an overhead and Personal Living Standard of $30,000. Per Year. Then they must be keyed to the proposition that their earning must go on! Competition from new forces into the fold are, of course, distasteful. Continual bickering for more and more requirements means that the profession will sink into the hands of those who cannot profess the Jacksonian philosophy of democracy in the law. It must resolve itself into the hands of the

moneyed classes—the very clients that the members of the committee cater to, or else, as soon as a candidate is admitted. He Must bend to temptation to make restitution for the enormous expense involved in becoming a lawyer. Cynical Disregard of Fiduciary Duty: — The committee, in rejecting a candidate for admission need not—And Do Not—give any reason for the rejection. In other words, they are at liberty to hold a candidate forth as undesirable in the eyes of legal society, as well as social, completely depriving him of everything for which he strived, by just a stroke of the pen in the very same manner as our Nazi Fuehrer—Editorial N. Y. Post—May 27th, 1939: "Appropriate property belonging to him? The looted households of the Jews in Germany, the ravaged monasteries and nunneries of Austria, the denuded bank of Czecho-Slovakia, all bear witness that is just routine Nazi doctrine". The same with the Character Committee. They too can cut a man's life off without any statement whatsoever. "Legal Chicanery—Beneficient Darkness", in the words of Justice Pecora.

Convenient Subordination of Official Obligation to An Avid Pursuit of Personal Gain: — The doctrine of "I Am Character" by the appointment on the committee, makes us all feel that conversely perhaps, we are Not of Character. Recently, I had occasion to speak to about 100 lawyers and none of them would dare try a case against any member of the committee, for fear that some day there may be retribution.

Every statement made for advancement of the legal profession is only within the realm of the Chairman of the Character Committee but at the same time the Chairman, or other members to their clients, become a guaranty of legal victory without opposition. Do they cater to the one who is poor or destitute—how can they? At the terrific financial burden that they must carry!

Just suppose for example, that at some time prior to admission to the Bar, a candidate had a case with their client—how do you think the candidate would fare under their ideas? They would force a settlement as they do now!

Suppose, also, that the candidate had expressed in writing or orally, some statement under the constitutional guaranty of free speech, or through an investigatory capacity, had exposed their client—or perhaps had gained a point of knowledge superior to the committee's! THESE MEN ARE IN ACTIVE PRACTICE today. They MUST satisfy themselves and clients who pay the FEES.

PRIVATE CLUBS: — That's the place to have "Legal Chicanery and Beneficent Darkness" NOT the Quasi Judicial monastery of righteousness.

May I beg of you to give this matter your thoughts for immediate discussion at the conference.

Respectfully

(Signed) NATHAN WILLNER
BCS—LLB—LLM—CPA

APPENDIX B-5

Murray Hill 2-6135

NATHAN WILLNER
Certified Public Accountant

521 Fifth Avenue
New York City

June 12, 1939

Mr. Fred L. Gross
16 Court St.,
Brooklyn, N. Y.

Re: *Committee of Unethical Practices*
Announcement in the New York Times

June 11, 1939.

Sir:

With whatever ounce of energy you can muster in your being, you must in the name of a true administration of justice add your voice against the cowardly method of unethical procedure in rejecting candidates to the Bar.

May I state that I am prepared to testify before your committee at my own expense, anywhere in the State of New York, in reference to my case—similar no doubt to many others—whereby the Committee of Character and Fitness can be proven to be steeped in stealth; unethical in every sense of the word; political henchmen of a system of greediness which guarantees economic security to themselves alone; harboring the temerity to deprive rights without the necessity of stating reasons or conclusions of their peculiar findings; keeping the standards of attainments for admission castled in their own confines, in order to cloak their contemptuous determinations in their exclusionary guillotine:

Appendix B-5.

Sir, may I also state:

1) There never will be anything like ethics, unless these omnipotent rulers are first insulated from their own private practices which they must safeguard continually.

2) There never will be ethics so long as the "recommendation" method exists, of ushering in candidates before these persons of almighty power and final say.

3) There never will be ethics so long as there is No STANDARD which governs the admeasurement of a candidate for admission to the Bar, for you leave open the door to one entrant and close it in the face of another of the same calibre or even better.

Can it be possible that the law has been so blind that it could not foresee the abuse to which the present method has been subjected to? Or has it been the machinations of a certain cool calculating crowd?

Respectfully

(Signed) Nathan Willner
B.C.S.—LL.B.—LL.M.—C.P.A.

APPENDIX B-6

(COPY)

Murray Hill 2-6135

NATHAN WILLNER
Certified Public Accountant

521 Fifth Avenue
New York City.

June 12, 1939.

Mr. Charles J. Buchner,
50 77th St.
Brooklyn, N. Y.

Re: *Committee of Unethical Practices*
Announcement in the New York Times

June 11, 1939.

Sir:-

"With whatever ounce of energy you can muster in your being, you must in the name of true administration of justice add your voice against the cowardly method of unethical procedure in rejecting candidates to the Bar.

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Appendix B-6.

for admission castled in their own confines, in order to cloak their contemptuous determination in their exclusionary guillotine."

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Respectfully,

(Signed) NATHAN WILLNER
B.C.S.—LL.B.—LL.M.—C.P.A.

APPENDIX B-7

June 29, 1939.

Mr. John G. Jackson
15 Broad St.
New York City

Re: Editorial—World Telegram

Sir:

Enclosed is a copy of a letter I sent to every member on the Committee of Unethical Practices.

To date, I have received no acknowledgment, much less a reply.

Yet, no one, can deny the simple unadulterated truth for which this letter clamores.

May I beg of you to permit me leave to set forth a categorical sequence of events that occurred to me, and in *every step* you will perceive the rotten, indecent scheme that is prevalent today under the "Character Committee" method.

You may be assured that I am ready to appear before any body of men who are militantly seeking specific reforms in our present methods, for a finer administration of justice.

Your kind advice is anticipated.

Respectfully,

(Signed) NATHAN WILLNER
521—5th Ave.
New York City.